

**In The Matter Of:**  
*UNITED STATES OF AMERICA, v*  
*DAVID ORTIZ,*

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*May 13, 2013*

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*SOUTHERN DISTRICT REPORTERS*  
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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x  
4 UNITED STATES OF AMERICA,  
5 v. 12 CR 336 (NRB)  
6 DAVID ORTIZ,  
7 Defendant..  
8 -----x  
9 New York, N.Y.  
10 May 13, 2013  
11 11:00 a.m.  
12 Before:  
13 HON. NAOMI REICE BUCHWALD,  
14 District Judge  
15 APPEARANCES  
16 PREET BHARARA  
17 United States Attorney for the  
18 Southern District of New York  
19 JESSICA LONERGAN  
20 ANDREA SURRATT  
21 Assistant United States Attorneys  
22 FEDERAL DEFENDERS OF NEW YORK  
23 Attorneys for Defendant  
24 MARK GOMBINER  
25 SARAH BAUMGARTEL  
DAVID GORDON  
Attorney for Defendant

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1 (In open court)  
2 LAW CLERK: This is 12 Criminal 336, United States of  
3 America versus David Ortiz.  
4 Is the government present and ready to proceed?  
5 MS. LONERGAN: Yes, for the government, Jessica  
6 LonerGAN and Andrea Surratt, and with us at counsel table, with  
7 the Court's permission, an intern in our office, Matthew Regan.  
8 Good morning, your Honor.  
9 LAW CLERK: Defense present and ready to proceed?  
10 MR. GOMBINER: Yes, Mark Gombiner and Sarah  
11 Baumgartel, Federal Defenders, for Mr. Ortiz.  
12 THE COURT: Sit down, please.  
13 MR. GOMBINER: Thank you.  
14 THE COURT: As I think everybody is aware, on Friday  
15 afternoon sometime after 6 o'clock we had a telephone  
16 conference, and it was the, I think, considered judgment of all  
17 counsel that Federal Defenders had a conflict of interest that  
18 requires a change of counsel for Mr. Ortiz with respect to the  
19 trial of this case that was supposed to commence this morning.  
20 The CJA of the day was Mr. Gordon, and I was able to contact  
21 him by phone after the conference and ascertained that he was  
22 available to try this case on July 15, which I thought was a  
23 reasonable gap in time to let new counsel prepare.  
24 So I would think that the first order of business is  
25 to appoint Mr. Gordon.

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1 MR. GOMBINER: Judge, before we're relieved as  
2 counsel, I want to put something on the record. And we have an  
3 application to the Court, if that's possible.  
4 THE COURT: Sure.  
5 MR. GOMBINER: First, I just want to summarize a  
6 little bit of -- now this doesn't --  
7 THE COURT: One second, just before you do it, one  
8 matter I was going to raise was in a way technical, but maybe  
9 not technical issue was whether the transcript of Friday could  
10 be made available to Mr. Gordon, or whether that actually would  
11 put you in a conflict position with your prior counsel, even  
12 though I realize whatever is in there is now Brady material  
13 that the government has to produce, it seems to me.  
14 So just before you say anything, I thought I would  
15 toss that idea.  
16 MR. GOMBINER: Judge, anything we said at the  
17 conference on Friday or anything I say here is based  
18 exclusively on public records, either transcripts or documents  
19 that were filed in a court. We have not made any attempt to  
20 contact -- to get the file for Kevin Morrissey or to make any  
21 other inquiries in any way to try to learn anything connected  
22 with the Federal Defenders' prior representation of  
23 Mr. Morrissey, so I don't think there's any need.  
24 THE COURT: I just wanted to be sure because it was  
25 never a hundred percent clear to me that you had that

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1 information.  
2 MR. GOMBINER: I want to explain that a little bit,  
3 maybe.  
4 What happened here is that Monday evening, the last  
5 Monday evening, pursuant to a request by Ms. Baumgartel, the  
6 Court ordered the government to make available the 3500  
7 material for the confidential informant. And we previously did  
8 not know his name, although our client I think knew he was  
9 talking to someone named Kevin, we didn't know who this person  
10 was.  
11 In any event, subsequent to that -- first it turns out  
12 Mr. Morrissey used many, many, many different names, but that  
13 was part of the 3500 material. But I was doing some -- in the  
14 3500 material it indicated that Mr. Morrissey had been a paid  
15 informant for the ATF since 2010, and that he previously had  
16 been a witness in two cases in the Bronx. I think they  
17 referred to them as homicide prosecutions.  
18 In any event, that struck me as kind of unusual that  
19 someone might be a witness in two different cases, and the  
20 government gave us the names of two cases. One, it turned out,  
21 was not the actual true name of the case that Mr. Morrissey was  
22 a witness in a case, defendant Felipe Figuerel, in fact the  
23 defendant's name was Felipe Arroyo. In any event, based on  
24 that, that struck me as someone who might be a little more --  
25 it's very unusual that any defendant would be a witness in two



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1 separate homicide cases unless he was a professional  
2 informant -- a jailhouse snitch or professional informant of  
3 some kind. And based on that, I went on Westlaw, put in  
4 Mr. Morrissey's name, and found an unpublished opinion by Judge  
5 Oetken in which one of the defendants in one of the homicide  
6 cases, the Ricardo Jimenez case, had a pending 440 motion which  
7 one of the contentions is the state prosecutor failed to  
8 disclose Brady material about Mr. Morrissey.

9 And after that, I went on PACER, I pulled up the  
10 documents, looked at the filings in the case before Judge  
11 Oetken, and found that there's a presently pending state court  
12 440 proceeding in which the Office of the Federal Defender  
13 represents Mr. Jimenez. And I called the attorney for  
14 Mr. Jimenez and she said oh, yes, we have a lot of material on  
15 Mr. Morrissey, public records, and in any event, she provided  
16 those materials to me.

17 So what we learned, among other things, is that in  
18 1992 Mr. Morrissey sent a letter to Judge Leo Glasser of the  
19 Eastern District in which he announced that there was a person  
20 named Ray Sanchez living inside his body who was making him do  
21 all the bad and illegal things he was doing. He wrote some  
22 other letters to judges saying he was schizophrenic and taking  
23 17 pills a day which caused him memory loss.

24 There were some psychiatric evaluations based on the  
25 request of what was then the Federal Defenders. They filed a

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1 motion for competency evaluation for Mr. Morrissey. There was  
2 a report produced that Judge Sifton characterized as stating to  
3 a medical certainty that Mr. Morrissey was a malingerer and  
4 faker and someone who lied for his advantage.

5 In that the same proceeding, the United States  
6 Attorney's Office for Eastern District of New York sought an  
7 upward adjustment at sentencing on the grounds Mr. Morrissey  
8 had obstructed justice by, among other things, threatening his  
9 wife and child with a gun to get them to change their story,  
10 that he lied about being the subject of threats by John Gotti,  
11 who had a trial pending at that time, in an effort to get  
12 transferred to another jail. And I think -- there were some  
13 other allegations, too, that they described as numerous  
14 instances of making false statements to advance his cause at  
15 sentencing.

16 Since that case, Mr. Morrissey has been, as was  
17 revealed by the very extensive rap sheet we have for him, has  
18 been committing crimes at a rather staggering rate, probably  
19 about 35 separate convictions, violations of supervised  
20 release. He was prosecuted by the United States Attorney's  
21 Office in 2000 here and the case was sent -- in this district,  
22 but then there was a Rule 20 to the Eastern District of New  
23 York.

24 In 2008, Mr. Morrissey, when he was testifying in one  
25 of these homicide trials in the Bronx, testified that he has

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1 been a cooperator for a long period of time, that most of his  
2 cooperation has been with the federal government. He's  
3 testified he was working with the FBI, the Secret Service, and  
4 that he had a United States marshal named Craig Michael Kane  
5 who was assigned as a personal handler. He also testified that  
6 in fact he has supposedly received some information about  
7 homicides in four separate cases, not just the government  
8 saying two cases where he testified at trial, but at this  
9 proceeding saying there were four separate cases in which he  
10 supposedly acquired -- somebody confessed or he somehow  
11 acquired information about homicides.

12 And it seems to me that none of this information was  
13 reflected in what we got from the government. And in fact,  
14 although one would think when they say he's been a confidential  
15 informant for the ATF since 2010, which is when this case  
16 started, that by implication -- at least we initially read it  
17 that he wasn't an informant before that.

18 And putting aside the fact that this conflict wasn't  
19 discovered, which was actually not that hard to realize there  
20 was one because the docket sheet for his case said that he was  
21 initially represented by a Community Defender organization,  
22 which is the Federal Defender's Office, but putting that issue  
23 to one side, I do think that the Court should undertake some  
24 sort of inquiry of the prosecutors, the government in this  
25 case, as to what steps they have taken to investigate their own

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1 witness. This is not -- we're not talking about somebody who  
2 is working for a little police department down in Georgia or  
3 something, this guy, by his own testimony, has been working  
4 extensively for the federal government for many years now and  
5 seems to have been able to do that despite like a really pretty  
6 amazing criminal record including getting arrested for drug  
7 possession and pleading guilty during the very time that he was  
8 working as a confidential informant on this case.

9 But it seems to me that there were definitely  
10 enough -- even based on the very limited disclosures that we  
11 received in the 3500 material, there were definitely enough red  
12 flags there to make anyone who had any interest in actually  
13 finding out who their witness was to take some further  
14 investigation. And since this all has got to be in the  
15 Department of Justice files, because they prosecuted him in  
16 1992, the same information I'm talking about was -- I mean  
17 they're the ones who moved for an upward adjustment for  
18 obstruction of justice, they got these letters, and there's a  
19 letter from Judge Glasser sending it to the prosecutor. So  
20 it's not like they didn't have this information.

21 I know we have to get off this case, which I deeply  
22 regret, but before we get off, I do think that the Court  
23 should, even if it's in camera, in some way make some kind of  
24 inquiry as to what is going on here. We're reading in the  
25 Times, there's a front page story about how in Brooklyn there's



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1 corroboration of what he says in his -- what the federal  
2 defender says that he put in the transcript that he was also a  
3 paid informant for the FBI and the Secret Service. We clearly  
4 at this point, now that we have been made aware of that, we'll  
5 look into it to learn more about that.

6 THE COURT: And was Mr. Morrissey acting in his role  
7 as a paid informant for the ATF in the context of the case  
8 before me?

9 MS. LONERGAN: Yes, your Honor, except for the very  
10 initial interaction between him and the defendant, which was he  
11 was not a paid informant at that point. But based on what he  
12 learned from that initial interaction, he reached out to people  
13 in law enforcement and became a paid informant with ATF.

14 THE COURT: Teach me, when ATF or another agency  
15 engages somebody as a paid informant, what kind of  
16 investigation do they do before they decide to utilize the  
17 individual's services?

18 MS. LONERGAN: Your Honor, I know that they pull the  
19 confidential informant's criminal history. Beyond that, I  
20 can't speak for what ATF does.

21 THE COURT: And you knew that he had a marshal  
22 handler?

23 MS. LONERGAN: We didn't know -- he was not referred  
24 to as a handler in our conversations. What we did learn was  
25 that after the initial interaction with the defendant in this

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1 And in fact, when you look at this individual's own  
2 sworn state trial testimony, he spells out a long record of  
3 cooperation prior to that. And the government, even just by  
4 the individual saying that he had a contact in the deputy  
5 marshal's service, which the government did not disclose that  
6 they knew until just this moment, they should have at least  
7 done some further inquiry to determine how he had that contact.

8 And your Honor, they didn't disclose his name, they  
9 didn't disclose his connection with the Bronx detective who he  
10 had reached out to. And so the disclosures that they made  
11 painted a picture of a person who had never before cooperated.  
12 They didn't even disclose that in his prior state trial  
13 testimony that he was acting as a cooperator. From their notes  
14 he could have just been an unlucky or lucky witness to two  
15 murders. They didn't even specifically say that it was  
16 pursuant to state cooperation. That really puts a different  
17 slant on an individual's testimony and credibility, and it's  
18 really very important disclosure material.

19 THE COURT: You didn't notice that it said that there  
20 was a competency hearing ordered?

21 MS. LONERGAN: No, your Honor.

22 THE COURT: Mr. Gombiner, you said that there's a case  
23 currently before Judge Oetken, right?

24 MR. GOMBINER: Yes.

25 THE COURT: But you also said that there's currently a

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1 case he reached out to someone he knew in the Bronx, and when  
2 he did not get a response from that person in the Bronx he  
3 reached out to someone that he knew at the marshal's Service.

4 THE COURT: There is someone by the name of Craig  
5 Michael Kane?

6 MS. LONERGAN: I do not know. We know that he reached  
7 out to a deputy U.S. marshal, and that the deputy U.S. marshal  
8 is someone who ultimately put him in contact with the ATF.

9 MS. BAUMGARTEL: Your Honor, may I say, this is very  
10 troubling, because what the government disclosed to us, the  
11 very limited amount they disclosed is from one meeting they  
12 have in their notes: Reached out to Bronx detective, another  
13 contact, in touch with ATF. Now the government is saying they  
14 did in fact know that he had a deputy marshal contact who he  
15 was in touch with, but they didn't disclose that in even the  
16 3500 material that they produced.

17 And if you look at, for example, the docket that we  
18 were just discussing, it references on there the Kevin  
19 Morrissey -- the informant's competency proceeding. So even  
20 looking at the docket you should notice there's something  
21 there. What we're concerned about is the 3500 that the  
22 government produced presented a picture that this is an  
23 individual whose first contact with law enforcement in terms of  
24 cooperation was in November 2010 when allegedly he first had  
25 this interaction with Mr. Ortiz.

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1 440 pending in state court?

2 MR. GOMBINER: Yeah.

3 THE COURT: They should not both be happening at the  
4 same time.

5 MR. GOMBINER: I'm not a total expert on this case,  
6 but I think Judge Oetken stayed the proceedings in the federal  
7 case to allow the 440 motion to be proceeding.

8 The defendant is pro se in federal court, and there  
9 was a lengthy, complex, procedural history here, but I think  
10 the end result is that case is stayed so the 440 motion could  
11 be --

12 THE COURT: I thought you said he was represented by  
13 the --

14 MR. GOMBINER: Appellate Defenders. That's in state  
15 court, he's pro se in federal court.

16 Don't hold me -- I'm pretty sure that's right. It's  
17 Jimenez versus somebody. I could get the docket number. I  
18 think, from my memory, it's 11 Civ. 6468

19 MR. GORDON: Your Honor, may I have one moment with  
20 Mr. Gombiner?

21 THE COURT: Sure.

22 (Pause)

23 MR. GORDON: Thank you, Judge.

24 THE COURT: So is the bottom line here that an  
25 overwhelming percentage of what defense counsel has recited



<p>D5DTORTC Page 9</p> <p>1 a detective who had a witness who seemed to come up with 2 testimony about one homicide case after another. This is how 3 miscarriages of justice occur when you have got a government 4 that doesn't seem to have any concern -- I don't want to be -- 5 I'm not going to engage in any -- just based on the record 6 here, there does not seem to have been any effort at all to 7 check into the background of a witness who, even through the 8 very limited notes we had, is somebody who you would have to 9 think there might be something else up with this guy. 10 That's something that I would think -- or if he lied 11 to them, that's probably Brady material, too. If they asked 12 him have you ever been an informant and he said no, that would 13 be a pretty substantial lie. That would be a crime for one 14 thing. It would be Brady material. And if they didn't ask 15 him, I mean that's pretty -- I think that's fairly extremely 16 negligent. So we're asking the Court to make some kind of 17 inquiry as to what happened. 18 MS. BAUMGARTEL: Your Honor, I just want to add, so 19 it's a hundred percent clear, there were many things that 20 happened that were distant in time, but also some of this is 21 much more recent. So in the documents that we obtained, again 22 from public sources, he claimed as recently as November 2003 to 23 be mentally ill and incompetent. And his letters -- his 24 testimony in these cases talking about his extensive federal 25 cooperation, that occurred in March 2008. And there are</p>	<p>D5DTORTC Page 11</p> <p>1 MS. LONERGAN: Your Honor, the representation on the 2 docket sheet of who he was represented by in the 1992 case had 3 the lawyer's name, who currently works at Dreier, and -- 4 THE COURT: Works where? 5 MS. LONERGAN: Dreier LLP, which is a Pennsylvania 6 firm. 7 THE COURT: OK. 8 MS. LONERGAN: And then underneath at the very bottom 9 in italics it said designation, Community Defenders. We did 10 not recognize that is the same organization as Federal 11 Defenders of New York. It didn't say Federal Defenders of New 12 York, it said Community Defenders. That is something now that 13 we're aware means Federal Defenders, but we did not know that 14 when we looked at that. 15 THE COURT: No one teaches you that? 16 MS. LONERGAN: No. I have never been told if it says 17 Community Defenders that means Federal Defenders of New York. 18 THE COURT: You never read -- 19 MR. GOMBINER: Judge, it would say -- 20 THE COURT: It's in our CJA plan. It's in the statute 21 involving representation of indigents in federal court. I mean 22 do they teach you, by the way, that it used to be that what we 23 now call Federal Defenders was sort of the federal section of 24 the Legal Aid Society so that you would know if you saw Legal 25 Aid in this court it's them?</p>
<p>D5DTORTC Page 10</p> <p>1 records on file where he was sending letters to the United 2 States Attorney's Office and to his U.S. marshal, Craig Michael 3 Kane, as recently as 2006. So while many of these events -- 4 while there's been a long pattern of this conduct dating back 5 many years, it's also important for the Court to see it's 6 continued even much more recently. 7 THE COURT: Before we get to this, the question that I 8 had was how did the U.S. Attorney's Office not figure out this 9 conflict at the beginning? Based on the rather simple notion 10 that someone prosecuted in federal court in the Southern 11 District, now I learned in the Eastern District -- that there 12 must be something like a 50 percent chance, 40 percent chance, 13 I don't know what exactly your percentage of representation is, 14 but it's enormous -- likely had Federal Defenders/Legal Aid as 15 their counsel. 16 MR. GOMBINER: Judge, to be clear -- I think I was 17 clear, but we did not represent him in the Southern District 18 case but in the Eastern District case. 19 THE COURT: But this material is the Eastern District 20 case. 21 MR. GOMBINER: Yes. 22 THE COURT: I'm not an expert on reading these rap 23 sheets, but it doesn't take a genius to figure out that it's a 24 federal case and it's you. 25 So how did you guys not figure that out?</p>	<p>D5DTORTC Page 12</p> <p>1 MS. LONERGAN: Yes, your Honor. 2 THE COURT: That's good. And you never read -- after 3 you saw the docket sheet, you never went and read any of the 4 transcripts or other things that are referenced or got the 5 file, in which case presumably at some point the lawyer would 6 have said I'm so-and-so from Federal Defenders? Never read any 7 of that stuff? No? 8 MS. LONERGAN: No, your Honor. 9 THE COURT: Why not? You have a guy here who has the 10 longest rap sheet I have ever seen in any of the trials I have 11 had. I don't have the necessary the greatest lifetime 12 experience, but this is my 34th year on the bench here. And 13 don't you think it's your responsibility to learn everything 14 about your witness's criminal history so that, A, you can 15 evaluate whether you want to use him and trust him, and B, so 16 that you can be sure that you have given the defense everything 17 that they're entitled to know? 18 MS. SURRATT: It's true, your Honor, we did not pull 19 every transcript from every state and federal proceeding on his 20 rap sheet, which you noticed is lengthy. 21 THE COURT: Do you now know that Mr. Morrissey was a 22 paid informant for at least one federal agency? 23 MS. LONERGAN: Your Honor, we know that Mr. Morrissey 24 had contact with the United States marshal. We know that he 25 was a paid informant for the ATF. We do not have any</p>



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1 this morning and I guess on Friday came as a surprise to the  
2 government?  
3 MS. LONERGAN: Yes, your Honor.  
4 THE COURT: Is Mr. Morrissey involved in all of the  
5 transactions charged in this case?  
6 MS. LONERGAN: No, your Honor.  
7 THE COURT: How many?  
8 MS. LONERGAN: He is involved in three of the four.  
9 In one of those three, the undercover officer -- the undercover  
10 agent is also involved, and all four transactions are recorded.  
11 THE COURT: Is the evidence of the interaction between  
12 Mr. Ortiz and Mr. Morrissey limited to the recordings or would  
13 Mr. Morrissey be testifying about conversations that were not  
14 recorded?  
15 MS. LONERGAN: About 90 percent of his testimony would  
16 be about the recorded conversations, approximately ten  
17 percent -- those percentages are not -- those are ballpark.  
18 There are some conversations that he had with the defendant  
19 that were not recorded. Some of those conversations are  
20 corroborated in other ways because, for example, they came in  
21 between two recorded conversations, so what Mr. Morrissey is  
22 saying happened in the unrecorded conversation makes sense by  
23 what happened before and what happened after that's recorded,  
24 if that makes sense.  
25 MS. BAUMGARTEL: Your Honor, I would like to address

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1 this. I mean there are a couple of points. One is that during  
2 the period of time that we're talking about, my client was  
3 working with Kevin Morrissey at a tow truck company, and so  
4 they had interactions virtually every day. They had a lot of  
5 conversations that were not recorded in any way.  
6 I don't want -- I don't think that our defense is a  
7 mystery, but I think that some very important aspects of this  
8 trial will be instances that were not recorded, and I can name  
9 a few. One is just how it starts, because Mr. Morrissey is  
10 going to have one story about that, and our client's account  
11 will be very different, and that's not something that is  
12 recorded. That's something that Mr. Morrissey initiates that  
13 begins well before he ever contacts anyone from the ATF. And  
14 in a case like this where one of the jury instructions the  
15 Court -- the government submitted to the Court is if Mr. Ortiz  
16 held himself out, for example, as a firearms dealer, that will  
17 depend on Mr. Morrissey's testimony in large part.  
18 Another thing that springs to mind, and we brought  
19 this up in the last conference, on the recordings you can hear  
20 my client saying to Mr. Morrissey the value his guns, one gun  
21 is worth, he says, about 500. Days later the price that  
22 Mr. Morrissey ends up paying for it is a thousand. That is  
23 going to be a big point for the government. They want to call  
24 an expert witness to talk about how that was above market as  
25 evidence that my client was a firearms dealer. Mr. Morrissey

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1 will have one story about why the price of that gun went up,  
2 when the simple true account is simply my client didn't want to  
3 sell it and so he offered to pay him more than double in order  
4 to get him to sell it.  
5 So there are going to be a lot of important components  
6 of the trial that are not recorded and that go directly to our  
7 defense and where Mr. Morrissey's credibility is going to be  
8 important.  
9 THE COURT: Well, it seems to me the government has a  
10 lot of work ahead of it to follow through on all the leads to  
11 possible Brady and Giglio material that the defendant has  
12 brought to your attention. Is there any reason why it should  
13 take you more than two weeks to do that investigation?  
14 MS. LONERGAN: Your Honor, we don't know how long that  
15 investigation will take. We will start on it immediately, but  
16 it will involve things such as getting records from the state  
17 court, reaching out to see potentially this deputy U.S.  
18 marshal. I think at this point we would want to do a thorough  
19 investigation to look into what we have now learned, and I  
20 don't want to put a time frame on that.  
21 THE COURT: Well, I think there are two good reasons  
22 to put a time frame on it. How about three. One, that you  
23 didn't do it before, so therefore, if you are under a little  
24 pressure, it's OK with me; two, the defendant should have known  
25 about this, so there shouldn't be a delay; and three, you ought

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1 to learn a little bit more about your witness for your sake.  
2 I will give you until the end of the month. I don't  
3 see any reason that you shouldn't work hard to do this. The  
4 other thing is that I think it would not be inappropriate for  
5 the chief of the criminal division to send the Court an ex  
6 parte letter explaining in a sense what went wrong and what is  
7 going to be done to make sure this doesn't happen again. At a  
8 minimum, tremendous resources were invested by the Federal  
9 Defenders, who are operating under a sequester, who don't have  
10 the time to work on cases in which they can't represent the  
11 defendant. The work that the Court did is easily reasonable,  
12 and what they did may in the end help Mr. Ortiz, but  
13 nonetheless, they're not in the position to use their time on  
14 defendants who they're not able to represent. And I don't  
15 really understand fully how it is that the U.S. Attorney's  
16 Office failed to explore more closely the representation issue  
17 of any witness who has been indicted in the Southern and  
18 Eastern Districts of New York, because there ought to be a  
19 presumption, almost, that their lawyers were the Federal  
20 Defenders.  
21 And I think that what is clear is that with the wealth  
22 of information that came out of the Eastern District case that,  
23 had you done your homework in the first case, this whole  
24 situation would never have arisen because you would have  
25 learned about the competency exam and you would have learned



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1 about the remarks of the judges and you would have learned  
2 about the government's request for an upward adjustment, and I  
3 assume other things would have flowed from that.

4 So is there anything else before I officially appoint  
5 Mr. Gordon?

6 MR. GOMBINER: No, Judge, thank you.

7 MS. BAUMGARTEL: Your Honor, as a housekeeping matter,  
8 we have a transportation order for the Court. I can hand it  
9 off to Mr. Gordon or hand it up.

10 MS. LONERGAN: Your Honor, if I may, earlier in asking  
11 defense counsel about Friday's conference call, the Court  
12 referred to whether there was any Brady material in that  
13 conference call. I think that it's actually whether there was  
14 any Giglio material in that conference call, not Brady.

15 THE COURT: OK. I'm not going to --

16 MS. BAUMGARTEL: Your Honor, I don't want to quibble,  
17 but I mean the Supreme Court has made very clear that  
18 impeachment material is Brady material. That's what it is.  
19 The mechanism that requires the government to turn it over, and  
20 I will cite probably the easiest is Kyles v. Whitley, 514 U.S.  
21 419, but Brady material is material that tends towards  
22 impeachment. It's the same. Whatever precise language --

23 THE COURT: Let's say that psychiatric report says  
24 that Mr. Morrissey is incapable of telling the difference  
25 between truth and fiction, you don't think that's Brady

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1 I would ask that you give them more time so they do a thorough  
2 job and learn what they can about this guy. And if that means  
3 the trial date would have to be changed -- it may not have to  
4 be changed, but if it may have to be changed, we could deal  
5 with that later.

6 THE COURT: I think that I have the confidence that,  
7 with a fire having been lit under the U.S. Attorney's Office,  
8 that they will be able to contact essentially a whole bunch of  
9 law enforcement agencies and courts to get this information. I  
10 really don't see why, if they put their minds to it, that they  
11 can't achieve it. Because we're talking about contacting ATF,  
12 contacting the marshal's service, finding out if the witness  
13 ever worked for the FBI. They have got a list of their  
14 informants or confidential sources. And as far as getting --  
15 he testified twice apparently, in the state court.

16 MR. GOMBINER: Yes.

17 THE COURT: And they were murder cases, so they  
18 probably have transcripts. They're not like little cases which  
19 they never make the transcript.

20 MR. GOMBINER: They do have transcripts.

21 MR. GORDON: Obviously if the government decides that  
22 they don't want to go to trial on a case that depends on a  
23 witness like this and they want to nolle the case before July,  
24 we would have no objection.

25 THE COURT: That's one of the reasons I want them to

D5DTORTC

Page 22

1 material? Because if your case, as defense counsel argues, has  
2 a substantial component of you've got to believe this witness,  
3 and the witness has been medically examined and been found --  
4 let's say he was found to be a pathological liar. I'm not sure  
5 he was, but that report, which of course I have never seen, may  
6 just be in a sense a statement that he was manipulating all the  
7 tests, consciously doing so. The way those psychological  
8 testing protocols work, you can tell whether someone is  
9 manipulating them, and that may be all it said. But  
10 nonetheless, I certainly think I could come up, at least, with  
11 a hypothetical where issues going to the witness's credibility  
12 rise to the level of Brady and aren't just simply ways to stick  
13 pins in the witness.

14 So one question. I'm going to appoint Mr. Gordon to  
15 be Mr. Ortiz's counsel, but have you and Mr. Ortiz talked about  
16 whether he should stay here for another day to talk to you or  
17 should he go home? What are you planning on? Because simply  
18 before I sign this order I think that's a practical detail I'm  
19 going to think about.

20 MR. GORDON: Your Honor, I know he wants to get home.  
21 I could initially talk to him on the phone and then have him  
22 come back up again closer to trial.

23 But with respect to your asking the government to  
24 investigate further with respect to the informant, if they  
25 can't do it adequately and completely by the end of the month,

D5DTORTC

Page 24

1 work hard. I'm not telling them what to do, but that was the  
2 import. The defendant needs to know, you need to know, and the  
3 government needs to know. They have to make a decision,  
4 because I take the assistants at their word that this comes as  
5 much as a surprise to them as it does to me, and so I'm  
6 assuming that this was not part of the whole decision making  
7 process. And I don't know whether it should change it. I  
8 don't know what the evidence is. I don't know what's on tape,  
9 I don't know what is -- how much of this is dependent on  
10 whether you believe Mr. Morrissey or not, I have no idea.

11 So they're in the best position to ask themselves the  
12 theoretical question: If the jury decides that he is a total  
13 liar and they don't wish to believe anything that he says  
14 that's not corroborated, what would happen to their case? They  
15 should obviously go through that thought process.

16 MR. GORDON: May I have one moment with Mr. Ortiz?

17 THE COURT: Sure.

18 (Pause)

19 MR. GORDON: Mr. Ortiz would like to go home, and I  
20 think I should get up to speed before my talks with him so I  
21 could talk to him intelligently.

22 THE COURT: We only like intelligent conversations.

23 So I assume there's no objection to waiving the speedy  
24 trial time until July 15.

25 MR. GORDON: No objection.



D5DTORTC

Page 25

1 THE COURT: OK. I have signed your transportation  
2 order.

3 MS. BAUMGARTEL: Thank you.

4 THE COURT: I think that's it for today.

5 MR. GORDON: Your Honor, will we have a conference  
6 before the trial?

7 THE COURT: We'll do something.

8 o0o

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HEALTH AND HOSPITAL CORPORATION  
CORRECTIONAL HEALTH SERVICES  
AFTER CARE LETTER

3287-00

AFTER CARE LETTER

Date: 11/8/07

Whom It May Concern:

Patient Kevin Morrissey has been under our care for the following conditions:

Health Problems

II. Treatments, Medications,  
Date, Follow-Up Needs

Schizophrenia, Undifferentiated Type Zyprexa 20 MG HS

Polysubstance Dependence

Hypertension

Toprol XL 50MG

History of motor vehicle accident, splenectomy 1997

Fracture - 10<sup>th</sup> rib posteromedially

metrin 400 MG BID

Follow-up care is required for the above conditions(s)

Clinic Tel. # 718 546 4698 <sup>Mental Health</sup>



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX – PART \_\_\_\_

SEP 30 2011

-----X	
THE PEOPLE OF THE STATE OF NEW YORK, :	
:	AFFIRMATION OF
:	PATRICK L. BRUNO
-against-	:
:	
RICARDO JIMENEZ,	:
:	Ind. 3825/2006
:	
Defendant.	:
-----X	

PATRICK L. BRUNO, ESQ., an attorney duly admitted to practice in the State of New York, does hereby affirm under penalty of perjury that the following is true:

1. I was appointed to represent Ricardo Jimenez on Indictment No. 3825/2006. Mr. Jimenez was charged with second degree murder for a shooting that occurred in July of 1989. The case proceeded to trial and jury selection began on June 20, 2007.
2. As part of discovery, I requested that the prosecution provide me with the prior convictions and bad acts for any of their witnesses.
3. I received a one-page memo from Assistant District Attorney Lisa Mattaway, dated June 8, 2007, informing me of promises made to two incarcerated witnesses, Andrew O'Brien and Kevin Morrissey. Specifically, the memo stated



that Mr. O'Brien "[h]as asked for a letter to be prepared by the undersigned that he can have put in his file stating that he testified for the Bronx District Attorney's Office." As to Mr. Morrissey, the memo stated that he had pending cases in Nassau, Queens and Brooklyn, that prosecutors in Nassau and Brooklyn had apparently agreed to give him a sentence of one to three years, but the Queens prosecutor had not and that Mr. Morrissey "asked for a phone call to be made to Queens if he testified for the Bronx District Attorney's Office." I was not informed of any other promises made to these witnesses.


4. On June 20, 2007, the day jury selection began, I received from ADA Mattaway a one-page document listing convictions for prosecution witnesses Andrew O'Brien, Kevin Morrissey and Esco Blaylock. I was not informed of any other convictions or bad acts for these witnesses.

5. Due to the timing of these disclosures, which occurred as the trial was beginning, I did not conduct any independent investigation of criminal backgrounds of these three witnesses, nor did I request additional time to do so. In preparing my cross-examination of these witnesses, regarding their prior convictions, bad acts and promises made to them in exchange for their testimony, I relied solely on these disclosures.



6. Trial testimony began on June 28, 2007 and, after lengthy deliberations, the jury returned a guilty verdict on July 13, 2007.

Dated: September 28, 2011

  
PATRICK L. BRUNO, ESQ.



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: CRIMINAL TERM

-----X  
THE PEOPLE OF THE STATE OF NEW YORK  
Ex. Rel., RICARDO JIMENEZ  
a.k.a. - RICARDO SILLIE

Defendant,

-AGAINST-

THE PEOPLE OF THE STATE OF NEW YORK  
-----X  
Plaintiffs,

SIRS:

5-14 (30)  
NOTICE OF MOTION  
TO DISSMISS

Ind. # 3825/2006 ✓  
Grand Jury # 44395/2006

PLEASE TAKE NOTICE, that upon the annexed affirmation of RICARDO JIMENEZ, and upon all prior pleadings and proceedings had herein, the undersigned will move this court, in part 20 thereof, at 851 Grandconcourse, Bronx, New York 10451, on the 7th day of May, 2007, at 9:30 a.m. or as soon thereafter as counsel may be heard, for an order dismissing the indictment herein on the grounds that the defendant has been denied due process of law under the NEW YORK STATE CONSTITUTION and the UNITED STATES CONSTITUTION, by the lengthy and unjustifiable delay in commencing the prosecution herein, and granting such other and further relief as to the Court may seem just and proper.

Dated: April 12, 2007.  
Bronx, County

Respectfully Submitted,

*Ricardo Jimenez*  
RICARDO JIMENEZ  
Defendant,

RECEIVED

APR 25 2007

SUPREME COURT CLERK'S OFFICE  
BRONX COUNTY

07:21:25 PM 4/25/07  
APR 25 2007  
CLERK'S OFFICE  
BRONX COUNTY



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: CRIMINAL TERM

THE PEOPLE OF THE STATE OF NEW YORK  
Ex. Rel., RICARDO JIMENEZ  
a.k.a. - RICARDO SILLIE

Defendant,

-AGAINST-

THE PEOPLE OF THE STATE OF NEW YORK  
Plaintiffs,

AFFIRMATION  
IN  
SUPPORT OF  
MOTION  
TO  
DISMISS

Ind.# 3825/2006  
Grand Jury # 44395/2006

I, RICARDO JIMENEZ, duly sworn deposes and says:

1. That I am the defendant in the above captioned action.
2. That I make this affirmation in support of the within motion.
3. That under the instant indictment, the defendant JIMENEZ was charged with the crime of Murder in the second degree.
4. That the instant indictment is based upon an incident that occurred on or about July 3, 1989, nearly eighteen years prior to the indictment herein, in the County of the Bronx in which the victim was shot and killed in the course of an altercation inside the Whitestone Cinema, 2505 Bruckner Boulevard, in Bronx County.
5. An examination of the records of this case reveals that RICARDO JIMENEZ, was arrested a couple of days after the incident and held 3-4 hours and then released, interestingly neither the police nor the prosecution followed-up on any interrogation/information implicating JIMENEZ, despite the record indicating that July of 2001 the people claim that the defendant was again identified from multiple photo



array, then again in two (2) separate occasions in 2006 witnesses claim to have identified JIMENEZ, as well as the first witness that prosecutors claim identified the defendant in 1989 after only being showed one single photo of defendant JIMENEZ, however despite all this that is reflected throughout the entire proceedings from the inception and the records of this case the people never showed any interest, nor followed up on any aspect of this case, it must be emphasized that at all critical stages concerning this incident defendant JIMENEZ, was either present in New York State Department of Corrections, or after being released in 1994, and his subsequent arrest (4) four months later for an unrelated offense in the State of New Jersey, and throughout his transfers to various facilities, all known to the prosecution, prior to being released and returning to New York City.

6. It is clearly evident that in addition to this lengthy delay in prosecuting the offense charged, the memories of the witnesses could possibly be dulled by the passage of time, and this in effect has caused actual prejudice to the defendant, inherently hindering and or impairing the ability of the defendant to adequately prepare and mount a defense against the allegations being made with regards to these proceedings.
7. Due to the lengthy delay in prosecuting defendant JIMENEZ is unreasonable and unjustified and has resulted in a violation of his right to Due Process of Law pursuant to the NEW YORK CONSTITUTION article 1 § 6, and the UNITED

STATES CONSTITUTIONAL AMENDMENT 14; and as such requires the dismissal of the present indictment see: People v. Singer, 44 N.Y.2d 241, 405 N.Y.S.2d 2217(1978), People v. Washington, 43 N.Y.2d 772, 401 N.Y.S.2d 1007(1977), People v. Andine, 214 A.D.2d 373, 624 N.Y.S.2d 594 (1 Dept. 1995), People v. Rodriguez, 205 A.D.2d 417, 613 N.Y.S.2d 398( 1 Dept. 1994), People v. Allen, 13 A.D.2d 639, 789 N.Y.S.2d 56 (2nd Dept. 2004), People v. Morales, (N.Y. County 2006 Ind # 1721/2005).

8. By definition, the people have met the heaviest burden the law imposes- the burden of proof beyond a reasonable doubt. But aside from that, the passage of time takes a toll on Criminal cases. A re-trial of any matter, fifteen years after the fact, can never be wholly fair, witnesses memories can hardly be what they once were.
9. Some witnesses, have been contacted by individuals who have been contacted by individuals who have not hesitated to express a point of view; their communication and their questioning have not been neutral, and the danger that witnesses, however since, have been tainted by such contacts is very real.
10. Furthermore, defendant JIMENEZ was never placed in a line-up during his arrest in July of 1989, and the people never persisted in not arresting JIMENEZ, and not placing JIMENEZ in a line-up, and not following up any leads in any way.
11. Failure to place JIMENEZ, in a line-up or to create a photo array negates any claim of a good faith investigation(s),

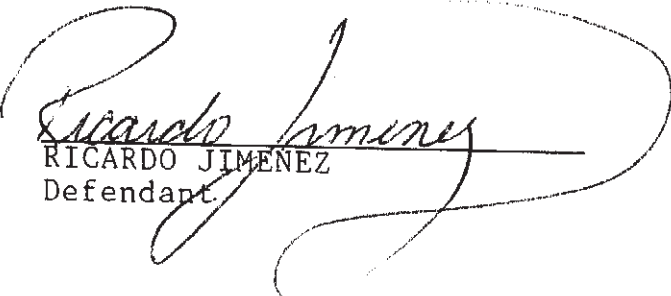


despite the fact that the description of JIMENEZ in 1989 warranted enough to compose a photo-array, line-up, or even seek an indictment at that time.

12. Moreover, eventhough their is no statute of limitations for the offense charged (Murder 2°) however where the prosecution knows of the whereabouts, they have to show good cause, and justification for the delay in commencing the proceedings against a defendant.

WHEREFORE, it is respectfully requested that the Court dismiss the indictment herein and grant such other and further relief as to the Court may seem just and proper.

Dated: April 13, 2007  
Bronx, New York

  
RICARDO JIMENEZ  
Defendant.

Sworn to me before this  
12 day of April, 2007.

  
NOTARY

PUBLIC

JOSEPH CORREA  
Commissioner of Deeds  
City of New York - No. 4-5401  
Cert. Filed in Queens County  
Commission Expires Dec. 29, 2008

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: CRIMINAL TERM

-----X  
THE PEOPLE OF THE STATE OF NEW YORK,  
Ex. Rel., RICARDO JIMINEZ a.k.a RICARDO  
SILLIE,

DEFENDANT

- against -

AFFIDAVIT

Indictment No. 3825/2006

THE PEOPLE OF THE STATE OF NEW YORK,

PLAINTIFFS.  
-----X

PATRICK L. BRUNO, an attorney at Law, duly admitted to practice in the  
State of New York, hereby affirms under penalty of perjury:

1. That I am the attorney of record having been assigned by the  
Appellate Division.

2. That this Affirmation is submitted in support of the Defendant's  
prayers for relief as enumerated in the annexed Notice of Motion.

3. That the statements made herein are true to your affiant's own  
knowledge, except as to those statements made upon information

4. That the sources of your affiant's information and belief are the  
Court records, the defense file, conversations with the Defendant and the Voluntary  
Disclosure Form submitted by the People.



5. That the defendant is charged in the indictment with the crime of Murder in the Second Degree and related crimes.

6. I have adopted Defendant's Motion, which is submitted herein.

Dated: Floral Park, New York  
April 24, 2007

Respectfully submitted,



---

PATRICK L. BRUNO

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: CRIMINAL TERM: PART M30

-----x

THE PEOPLE OF THE STATE OF NEW YORK : Indictment

: 3825-06  
252311-06

-against-

RICARDO JIMENEZ,

Defendant.

-----x

851 Grand Concourse  
Bronx, New York 10451  
May 21, 2007

B E F O R E: HONORABLE WILLIAM MOGULESCU

A P P E A R A N C E S:

FOR THE PEOPLE:  
ROBERT T. JOHNSON, ESQ.  
District Attorney, Bronx County  
BY: LISA MATTAWAY, ESQ.  
Assistant District Attorney

FOR THE DEFENDANT:  
PATRICK L. BRUNO, ESQ.

Maria Esther Rivera, RPR  
Senior Court Reporter



## Proceedings

1 THE CLERK: This is number 35 and 40,  
2 Ricardo Jimenez.

3 MR. BRUNO: Patrick L. Bruno, 99 Tulip  
4 Avenue, Floral Park, New York, for Mr. Jimenez.

5 Your Honor, I'm ready for trial.

6 MS. MATTAWAY: Lisa Mattaway, for the  
7 Office of the District Attorney.

8 THE COURT: And?

9 MS. MATTAWAY: People are not ready  
10 for trial.

11 THE COURT: Why?

12 MS. MATTAWAY: There are a number of  
13 reasons. First, I recently got off trial  
14 myself. I was on a six-week trial in Part T-16.  
15 Then I got off that trial about a week ago, and  
16 I was ordered by Justice Bernstein to start a  
17 three defendant 2005 in case and not to take  
18 anything that would conflict with that.

19 This case is a late 2006. He was  
20 arrested August 31, 2006.

21 THE COURT: In other words, he's only  
22 been in jail for 10 months.

23 MR. BRUNO: It's a murder that  
24 occurred 18 years ago.

25 THE COURT: But he's only been in jail

## Proceedings

1 10 months.

2 MS. MATTAWAY: The three defendant  
3 other case is a full year older than that.

4 THE COURT: I understand that. And  
5 obviously those three defendants who have been  
6 in jail for 20 months or 22 months should have a  
7 trial. If your office doesn't have sufficient  
8 people to try these cases within a reasonable  
9 time period, they should hire more people or  
10 consent to bail.

11 MS. MATTAWAY: Now that I'm off trial  
12 with the case I just finished, I'm actively  
13 working on getting this case to trial. I met  
14 with a witness only a week ago. I'm meeting  
15 with another witness tomorrow. The longer I  
16 work with the case, the better.

17 THE COURT: If it's getting better,  
18 somebody else should --

19 MS. MATTAWAY: Do you want to call  
20 Judge Bernstein?

21 THE COURT: When is that case  
22 scheduled for?

23 MS. MATTAWAY: June 6th.

24 THE COURT: If you start the case  
25 now --



## Proceedings

1 MS. MATTAWAY: There is no way that I  
2 can start.

3 THE COURT: When can you start it?

4 MS. MATTAWAY: Well, Your Honor, how  
5 about we put this case on for shortly after --  
6 this is a three defendant case. Now, I am  
7 abiding by Justice Bernstein's order not to take  
8 anything else. I don't know if defense would  
9 agree to go forward or will be ready. If we can  
10 put this on after that, then perhaps this will  
11 be the next case that goes. He told me on the  
12 2005 case --

13 THE COURT: June 4th?

14 MS. MATTAWAY: Sorry, Judge?

15 THE COURT: June 4th?

16 MS. MATTAWAY: No. June 6th. That  
17 case is on in M20. He told me don't take  
18 anything between now and then. If this case  
19 doesn't go, why don't we put it on for the  
20 Monday after?

21 MR. BRUNO: It is not a personal  
22 attack with this A.D.A., but on the last date,  
23 May 14th, the message was she's ready, but for  
24 the fact that one of the officers had a death in  
25 his family and it wasn't a close relative, so we

## Proceedings

1 postulated. For this reason we put it on a week  
2 later. You know, now an entirely different  
3 issue that would drag this case out another  
4 three weeks is being offered. I submit that we  
5 try this case between now and June 6th.

6 THE COURT: When can you be ready?

7 MS. MATTAWAY: I actually think the  
8 date I just gave the Court is probably a  
9 reasonable date. I'm actually still speaking to  
10 witnesses. There were several witnesses. It is  
11 18 years old. I have to get a new medical  
12 examiner to testify about the 18 year old  
13 autopsy.

14 THE COURT: This is a gunshot wound.  
15 You don't need the world's most foremost --

16 MS. MATTAWAY: I need to lay  
17 foundation, and I need to let the various agents  
18 know. I need somebody who is working in 2007,  
19 so I'm working --

20 THE COURT: The People said they were  
21 ready months ago.

22 MS. MATTAWAY: Yes, that's true.

23 THE COURT: If they were ready  
24 eight months ago, this is -- what does this have  
25 to do with anything? How could you have been



## Proceedings

1 ready eight months ago?

2 MS. MATTAWAY: Because I am ready.

3 THE COURT: What are you proposing on  
4 the way of bail?

5 MR. BRUNO: I would suggest \$10,000  
6 bail. The family would have no hopes of making  
7 much more than that.

8 THE COURT: I'm not prepared to do  
9 \$10,000 bail.

10 MS. MATTAWAY: This defendant has 10  
11 warrants from New York and New Jersey. He is  
12 not any kind of bail risk. The People can be  
13 ready in a very short time. He's only been in  
14 since August 31st.

15 MR. BRUNO: Only?

16 THE COURT: Only in the Bronx, he has  
17 only been in for 10 months and, oh, that's okay  
18 another year or two -- that's not acceptable to  
19 me. I will give you this adjournment. You will  
20 find somebody else to try the case, if you try  
21 that multiple defendant case. June 8th.

22 MR. BRUNO: May we set this for  
23 June 6th? If the case doesn't go, we can start  
24 this immediately.

25 THE COURT: June 8th.

## Proceedings

1 THE DEFENDANT: Excuse me, Your Honor.

2 THE COURT: You have a lawyer, and,  
3 Mr. Jimenez, I'm not prepared at this moment to  
4 set \$10,000 bail.

5 MR. BRUNO: Your Honor, my client  
6 submitted a pro se motion, which I adopted,  
7 that's also about five weeks ago. May we have  
8 some decision so that doesn't become an  
9 efficient delay?

10 THE COURT: Let me see.

11 THE CLERK: (Handing.)

12 THE COURT: The motion to dismiss on  
13 constitutional grounds is denied.

14 MR. BRUNO: Note my exception. We are  
15 on for June 8th for trial.

16 MS. MATTAWAY: Hearings and trial.

17 MR. BRUNO: Could that be a date  
18 certain, Your Honor?

19 THE COURT: I hope so.

20 MR. BRUNO: Are you setting any bail,  
21 Your Honor?

22 THE COURT: At the moment I'm not  
23 setting bail. You said he can't make more than  
24 \$10,000, and I'm not prepared to set \$10,000.

25 MR. BRUNO: May we approach?



## Proceedings

1 THE COURT: Yes.

2 (Whereupon, there is a discussion held  
3 off the record.)

4 THE COURT: Mr. Jimenez, at this point  
5 the bail will remain on remand status. We will  
6 reevaluate this. I'm asking you and Mr. Bruno  
7 to put together a maximum bail package that you  
8 are able to get together. On the adjourn date  
9 if the People are not prepared for trial, I will  
10 reconsider your bail application and I will  
11 reconsider it, but I am not prepared to do it  
12 today. The People have said that within two  
13 weeks or so Ms. Mattaway or somebody else will  
14 be in a position to try this case.

15 MS. MATTAWAY: Yes. The misdemeanor  
16 is tracking, Judge?

17 THE COURT: Yes.

18 \* \* \* \*

19  
20 Certified to be a true and accurate  
21 transcript of the stenographic minutes taken  
22 within.

23 

24 Maria Esther Rivera, RPR  
25 Senior Court Reporter

INFORMATIONAL PD 313.0B.1A (Rev. 1-86) PAGE 1 OF 1 PAGE 1

Case No. 840 Unit Reporting 45 Sqd. Complaint No. 5948 Date of This Report 7/3/89 Follow-Up No. 9

Date of Orig Report 7/3/89 Date Assigned 7/3/89

Complainant's Name - Last, First, MI. P.S.N.Y. Victim's Name - If Different

Last Name, First, MI. Blaylock, Esco Address, include City, State, Zip Apt No. 43

Home Telephone Business Telephone Position / Relationship Sex Race Date of Birth Age

Total No. of Perpetrators 1 Wanted Arrested Weapon Hand gun Describe Weapon (If firearm, give color, make, calibre, type, model, etc.)

Wanted Arrested Last Name, First, MI. UNKNOWN First name Leon 1057 Boynton Ave. Bx. N.Y. NYSD No. 43

Sex Race Date of Birth Age Height Weight Eye Color Hair Color Hair Length Facial Hair

Nickname, First Name, Alias Clothing Description, Scars, Marks, M.O., Etc. has a gold tooth, white shirt, white shorts, bk sneakers with no socks.

Wanted Arrested Last Name, First, MI. Address, include City, State, Zip Apt No. Res. Pct.

Sex Race Date of Birth Age Height Weight Eye Color Hair Color Hair Length Facial Hair NYSD No.

Cyeglasses Sunglasses Clothing Description, Scars, Marks, M.O., Etc. (Continue in "Details")

AREA WITHIN BOX FOR DETECTIVE/LATENT FINGERPRINT OFFICER ONLY. THIS BOX WILL BE UTILIZED BY INVESTIGATOR WHENEVER POSSIBLE AND MUST BE FULLY COMPLETED WHEN USING THIS FORM TO CLOSE A CASE "NO RESULTS."

Comp. Interviewed In Person By Phone Date Time Results Same as Comp. Report - Different (Explain in Details)

Witness Interviewed In Person By Phone Date Time Results Same as Comp. Report - Different (Explain in Details)

PERP 1 Converse Conducted If Yes - Make Entry in Body Re: Time, Date, Names, Addresses, Results Crime Scene Visited If Yes - Make Entry in Details Re: Time, Date, Evidence Obtained

PERP 2 Complainant Viewed Photos Results

PERP 1 Witness Viewed Photos Results

PERP 2 Crime Scene Dusted By (Enter Results in Details) Crime Scene Photos By (Enter Results in Details)

If Closing Case "No Results," Check Appropriate Box and State Justification in Details: C-1 Improper Referral C-2 Inaccurate Facts C-3 No Evidence / Can't ID C-4 Uncooperative Complainant

PERP 1 DETAILS: UP61# 5948 CASE# 840 HOMICIDE

PERP 2 INVESTIGATION: HOMICIDE

7 PERP 1 SUBJECT: INTERVIEW OF WITNESS ESCO BLAYLOCK

PERP 2 1. On 7/3/89 at 0415 hrs. the undersigned who was working a night watch interviewed Esco Blaylock at the 43 Pct. Det. Sqd. Office at which time he was also shown photos with negative results. He stated that he has been working at the Whitestone Cinema for about 2400 hrs. gotten off about 2400 hrs. also works in the concession at about 0010 hrs. and talking or because the popcorn was runn of the popcorn was just crumbs ar said I'm going to get my aft the theater and the victim showing. od in the back on the right started and sat in the back row ng on the other side (the right you the one with the popcorn. The shooter stood up and said "I got my mother fucking gun now" and shot at victim and missed, the victim was sitting down, the victim got up to pull out his guns and as he turned around the shooter shot at him again and hit him in the head as the victim went down his gun fired and he layed dead in the aisle a couple of rows from where he was sitting. Every one was rushing out and I was carried off with the crowd. Esco went on to say that he knows the shooter for two years from his friends, they introduced me to him, his first name is Leon he did not know his last name. The shooter after the shooting stood there for about 5 seconds and then left the theater by going out the side door. Both subject and victim were there by them selves. The victim was lying face down.

10 CHOICE 2 In view of the above this case is still active.

Reporting Officer's Name (Signature - Print) C. Horn Tax Registry No. 865786 Supervisor's Signature C.O.'s Initials



Date of Orig Report <b>7-3-89</b>		Date Assigned <b>7-3-89</b>		a No <b>840</b>		Unit Reporting <b>45 Det. Squad</b>		Complaint No <b>5948</b>		Date of This Report <b>7-3-89</b>	
Complainant's Name - Last, First, MI <b>PSNY.</b>						Victim's Name - If Different <b>Sean Victor Worrell</b>					
Last Name, First, MI						Address, include City, State, Zip					
Home Telephone		Business Telephone		Position / Relationship		Sex		Race		Date of Birth	
Total No. of Perpetrators		Wanted		Arrested		Weapon <input type="checkbox"/> Used <input type="checkbox"/> Possessed		Describe Weapon (If firearm, give color, make, calibre, type, model, etc.)			
Wanted		Arrested		Last Name, First, MI		Address, include City, State, Zip		Apt. No		Res. Pct.	
Sex		Race		Date of Birth		Age		Height		Weight	
Eye Color		Hair Color		Hair Length		Facial Hair		NYSID No			
<input type="checkbox"/> Eyeglasses <input type="checkbox"/> Sunglasses		Clothing Description, Scars, Marks, M.O., Etc. (Continue in "Details"):									
Wanted		Arrested		Last Name, First, MI		Address, include City, State, Zip		Apt. No		Res. Pct.	
Sex		Race		Date of Birth		Age		Height		Weight	
Eye Color		Hair Color		Hair Length		Facial Hair		NYSID No			
<input type="checkbox"/> Eyeglasses <input type="checkbox"/> Sunglasses		Clothing Description, Scars, Marks, M.O., Etc. (Continue in "Details"):									
<b>AREA WITHIN BOX FOR DETECTIVE/LATENT FINGERPRINT OFFICER ONLY. THIS BOX WILL BE UTILIZED BY INVESTIGATOR WHENEVER POSSIBLE AND MUST BE FULLY COMPLETED WHEN USING THIS FORM TO CLOSE A CASE "NO RESULTS."</b>											
Comp. Interviewed		In Person		By Phone		Date		Time		Results: Same as Comp. Report - Different (Explain in Details)	
<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> <input type="checkbox"/>		<input type="checkbox"/> <input type="checkbox"/>						<input type="checkbox"/> <input type="checkbox"/>	
Witness Interviewed		In Person		By Phone		Date		Time		Results: Same as Comp. Report - Different (Explain in Details)	
<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> <input type="checkbox"/>		<input type="checkbox"/> <input type="checkbox"/>						<input type="checkbox"/> <input type="checkbox"/>	
Canvas Conducted		If Yes - Make Entry in Body Re: Time, Date, Names, Addresses, Results:				Crime Scene Visited		If Yes - Make Entry in Details Re: Time, Date, Evidence Obtained			
<input type="checkbox"/> Yes <input type="checkbox"/> No						<input type="checkbox"/> Yes <input type="checkbox"/> No					
Complainant Viewed Photos		Results:									
<input type="checkbox"/> Yes <input type="checkbox"/> Refused <input type="checkbox"/> Future											
Witness Viewed Photos		Results:									
<input type="checkbox"/> Yes <input type="checkbox"/> Refused <input type="checkbox"/> Future											
Crime Scene Dusted		By (Enter Results in Details)				Crime Scene Photos		By (Enter Results in Details)			
<input type="checkbox"/> Yes <input type="checkbox"/> No						<input type="checkbox"/> Yes <input type="checkbox"/> No					
If Closing Case "No Results," Check Appropriate Box and State Justification in Details:											
<input type="checkbox"/> C-1 Improper Referral <input type="checkbox"/> C-2 Inaccurate Facts <input type="checkbox"/> C-3 No Evidence/Can't ID <input type="checkbox"/> C-4 Uncooperative Complainant											
<b>DETAILS:</b> <b>HOMICIDE</b> <b>Subject: INTERVIEW OF E. BLAYLOCK DOB. [REDACTED]</b> <b>Sister: [REDACTED]</b> <b>Girlfriend: [REDACTED]</b> <b>Mother: [REDACTED]</b> <b>Grandmother: [REDACTED]</b> <p>On July 3, 1989, at approximately 2130 hrs., I received a telephone call from Mr. E. Blaylock, indicating that he wished to meet with the undersigned.</p> <p>I responded to [REDACTED] and met with Mr. Blaylock and his girlfriend L. McGainey. Since the initial investigation revealed that Mr. Blaylock is a witness, and Ms. McGainey a possible witness, the undersigned transported them to CATCH. in the company of Det. Lugo, Bronx Task Force. Both witnesses viewed photos but no identification was made from photos viewed.</p> <p>At approximately 2330 hrs., July 3, 1989, I interviewed Mr. Blaylock at the 48th Pct., Bronx Detective Area Office. He stated the following:</p> <p>That he has been working at the Whitestone Cinemas for four weeks; that he lives with his sister [REDACTED] at above address, having moved from [REDACTED], with mother Deborah- Tel. # 8[REDACTED]6.</p>											
Continued on page # 2											
Reporting Officer's Name - Signature - Command Det. [Signature] 45 Sqd				Name Printed Serrano		Tax Registry No.		Supervisor's Signature [Signature]		C.O.'s Initials	
Choice 1		Choice 2		Page 1		Page 2		Page 3		Page 4	



DETAILS

HOMICIDE-CASE # 840 FOLLOW UP # 18

He said that on the date, time and location, and at approximately 12:00 Mid., July 2, 1989, he went to get a soda at the concession stand after he had finished work. (he works the pop corn machine upstairs)

He saw two men arguing, one of them was Leon, a M/B/about 5' 10", 175 Lbs., high-top haircut with shaved sides, and two blond streaks running along the side of the head but not meeting in the back. Leon wore a white shirt, white shorts, black sneakers, (no socks) has a gold tooth on the upper right side of the mouth that can be taken off. Mr. Blaylock said that Leon looks Puerto Rican, and can mimick a Jamaican accent. Leon is a violent guy and heavily involved into selling drugs. He said that he has seen Leon engaged in fists fights in at least five occasions. He met Leon through a friend.

He has known Leon for about 2 years. He said that Leon was arrested for possession of a rifle in February, 1989, on Boynton and Story Avenues. He said that Leon drove a Maxima-Grey, 1989, and before that, Leon drove a white beat-up car. He said that Leon had a girlfriend, Sharon, who had been reported missing by her mother about 4 months ago.

Mr. Blaylock said that Leon got in front of the popcorn line and began to argue with another Black male. That Leon made fun of the other male's Jamaican accent. He said that Leon told the male that he was going to get his pistol, and that the victim said "go get your pistol". Leon then asked the victim to go outside, but instead, the victim got his food and went to the movies. Leon then went outside.

Mr. Blaylock then went into the movie playing Batman-theater #1. he stayed to the rear of the theater, standing. Ten minutes into the movie, he saw Leon walk in and he recognized him. Leon looked around, and recognizing the victim said, "are you the one with the popcorn". He said the victim turned around but did not get up. Leon then stood up and continued to argue-the argument lasted for about three minutes. Mr. Blaylock said that he saw Leon take a gun out from his back and then firing a shot. The victim turned around and starts getting up while pulling a gun and pointing it at Leon. Leon then fires another shot hitting the victim in the forehead, and at the same time the victim's gun went off. Mr. Blaylock said that the victim fell on his stomach. Leon then ran out of the theater.

He said he went over to look at the victim; the victim had a big revolver; Leon had something like a pistol.

Mr. Blaylock said that Leon lived at 1057 Boynton Avenue, that he normally parked his car on Bronx River Avenue and Elder Avenue, that Leon's corner was Boynton and Watson., and that Leon had had the gold streaks on his hair for about a year.

He said that the victim was darker than Leon.

Case active.

Reporting Officer's Rank Signature, Command <i>[Signature]</i>	Name Printed 45 Sqd. Serrano	Tax Registry No. [Redacted]	Supervisor's Signature	C.O.'s Initials
---	---------------------------------	--------------------------------	------------------------	-----------------



INFORMATIONAL PD 313.08 1A (Rev. 1-85) 31		Crime	Pct	OCC	Complaint No.	Date of This Report	14 PERP 1
		Homicide	45		5948	7-4-89	
Date of Orig Report	Date Assigned	Case No.	Unit Reporting	Follow-Up No.		15 PERP 2	
7-3-89	7-3-89	840	45 Det. Squad	22			
Complainant's Name - Last, First, MI			Victim's Name - If Different			16 CHOICE 1	
PSNY.			Sean Victor Wörrell				
Last Name, First, MI			Address, Include City, State, Zip			17 CHOICE 1	
Home Telephone			Apt. No.				
Business Telephone		Position / Relationship		Sex	Race	18 CHOICE 2	
Date of Birth		Age		NYSID No.			
Total No. of Perpetrators		Wanted	Arrested	Weapon		19 CHOICE 2	
				Describe Weapon (If firearm, give color, make, calibre, type, model, etc.)			
Wanted		Arrested	Last Name, First, MI		Address, Include City, State, Zip	20 CHOICE 1	
				Apt. No.			
Sex		Race	Date of Birth	Age	Height	21 CHOICE 2	
Weight		Eye Color	Hair Color	Hair Length	Facial Hair		
<input type="checkbox"/> Eyeglasses <input type="checkbox"/> Sunglasses Nickname, First Name, Alias		Clothing Description, Scars, Marks, MO, Etc. (Continue in "Details")				22 CHOICE 1	
Wanted		Arrested	Last Name, First, MI		Address, Include City, State, Zip	23 CHOICE 2	
				Apt. No.			
Sex		Race	Date of Birth	Age	Height	24 CHOICE 1	
Weight		Eye Color	Hair Color	Hair Length	Facial Hair		
<input type="checkbox"/> Eyeglasses <input type="checkbox"/> Sunglasses Nickname, First Name, Alias		Clothing Description, Scars, Marks, MO, Etc. (Continue in "Details")				25 CHOICE 2	
AREA WITHIN BOX FOR DETECTIVE/LATENT FINGERPRINT OFFICER ONLY. THIS BOX WILL BE UTILIZED BY INVESTIGATOR WHENEVER POSSIBLE AND MUST BE FULLY COMPLETED WHEN USING THIS FORM TO CLOSE A CASE "NO RESULTS."							
Comp. Interviewed		In Person	By Phone	Date	Time	Results: Same as Comp. Report - Different (Explain in Details)	
<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
Witness Interviewed		In Person	By Phone	Date	Time	Results: Same as Comp. Report - Different (Explain in Details)	
<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
ERP 1	Canvass Conducted	If Yes - Make Entry in Body Re: Time, Date, Names, Addresses, Results			Crime Scene Visited	If Yes - Make Entry in Details Re: Time, Date, Evidence Obtained	
	<input type="checkbox"/> Yes <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No		
ERP 2	Complainant Viewed Photos	Results:					
	<input type="checkbox"/> Yes <input type="checkbox"/> Refused <input type="checkbox"/> Future						
5	Witness Viewed Photos	Results:					
ERP 1	<input type="checkbox"/> Yes <input type="checkbox"/> Refused <input type="checkbox"/> Future						
ERP 2	Crime Scene Dusted	By (Enter Results in Details)			Crime Scene Photos	By (Enter Results in Details)	
	<input type="checkbox"/> Yes <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No		
If Closing Case "No Results," Check Appropriate Box and State Justification in Details: <input type="checkbox"/> C-1 Improper Referral <input type="checkbox"/> C-2 Inaccurate Facts <input type="checkbox"/> C-3 No Evidence / Can't ID <input type="checkbox"/> C-4 Uncooperative Complainant							
6	DETAILS:						
ERP 1	HOMICIDE						
ERP 2	Subject: ATTEMPTS TO IDENTIFY "LEON"						
7	Efforts to identify the perpetrator known as Leon, was made this date, July 4, 1989:						
ERP 1	1. Contact with other units, CARS., ETAL.						
ERP 2	2. Canvassing of the vicinity of Boynton Avenue and Watson Avenue.						
8	3. Canvass of vicinity of Bx. River Avenue and Elder Avenue.						
ERP 1	4. All attempts proved negative.						
ERP 2	Case active.						
10	CHOICE 1						
11	CHOICE 2						
Reporting Officer's Rank - Signature - Command		Name Printed	Tax Registry No.	Supervisor's Signature		Officer's Initials	
Det. [Signature] 45 Sqd.		Serrano	845145	[Signature]			
Choice 1		Choice 2	Perp 1	Perp 2	Perp 1	Perp 2	



FD-311 (Rev. 1-66-31)		<b>HOMICIDE</b>		1 of 5		OCCE		Complaint No. 5948		Date of This Report 7-7-89						
Date of Orig 7-3-89		Date Assigned 7-3-89		Case No. 840		Unit Reporting 45 Det. Squad				Follow-Up No. 26						
Complainant's Name - Last, First, MI <b>PSNY.</b>						Victim's Name - If Different <b>Sean Victor Worrell</b>										
Last Name, First, MI.						Address, include City, State, Zip						Apt. No.				
Home Telephone		Business Telephone		Position / Relationship		Sex		Race		Date of Birth		Age				
Total No. of Perpetrators		Wanted		Arrested		Weapon <input type="checkbox"/> Used <input type="checkbox"/> Possessed		Describe Weapon (If firearm, give color, make, caliber, type, model, etc.)								
Wanted		Arrested		Last Name, First, MI		Address, include City, State, Zip						Apt. No.	Res. Pct.			
Sex		Race		Date of Birth		Age		Height		Weight		Eye Color	Hair Color	Hair Length	Facial Hair	NYSID No.
<input type="checkbox"/> Eyeglasses <input type="checkbox"/> Sunglasses		Clothing Description, Scars, Marks, M.O., Etc. (Continue in "Details")														
Wanted		Arrested		Last Name, First, MI		Address, include City, State, Zip						Apt. No.	Res. Pct.			
Sex		Race		Date of Birth		Age		Height		Weight		Eye Color	Hair Color	Hair Length	Facial Hair	NYSID No.
<input type="checkbox"/> Eyeglasses <input type="checkbox"/> Sunglasses		Clothing Description, Scars, Marks, M.O., Etc. (Continue in "Details")														
AREA WITHIN BOX FOR DETECTIVE/LATENT FINGERPRINT OFFICER ONLY. THIS BOX WILL BE UTILIZED BY INVESTIGATOR WHENEVER POSSIBLE AND MUST BE FULLY COMPLETED WHEN USING THIS FORM TO CLOSE A CASE "NO RESULTS."																
Comp. Interviewed		In Person		By Phone		Date		Time		Results: Same as Comp. Report - Different (Explain in Details)						
<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/>		<input type="checkbox"/>						<input type="checkbox"/>						
Witness Interviewed		In Person		By Phone		Date		Time		Results: Same as Comp. Report - Different (Explain in Details)						
<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/>		<input type="checkbox"/>						<input type="checkbox"/>						
RP 1 Canvass Conducted		If Yes - Make Entry in Body Re: Time, Date, Names, Addresses, Results				Crime Scene Visited		If Yes - Make Entry in Details Re: Time, Date, Evidence Obtained								
<input type="checkbox"/> Yes <input type="checkbox"/> No						<input type="checkbox"/> Yes <input type="checkbox"/> No										
RP 2 Complainant Viewed Photos		Results:														
<input type="checkbox"/> Yes <input type="checkbox"/> Refused <input type="checkbox"/> Future																
5 RP 1 Witness Viewed Photos		Results:														
<input type="checkbox"/> Yes <input type="checkbox"/> Refused <input type="checkbox"/> Future																
RP 1 Crime Scene Dusted		By (Enter Results in Details)				Crime Scene Photos		By (Enter Results in Details)								
<input type="checkbox"/> Yes <input type="checkbox"/> No						<input type="checkbox"/> Yes <input type="checkbox"/> No										
If Closing Case "No Results," Check Appropriate Box and State Justification in Details:																
<input type="checkbox"/> C-1 Improper Referral <input type="checkbox"/> C-2 Inaccurate Facts <input type="checkbox"/> C-3 No Evidence/Can't ID <input type="checkbox"/> C-4 Uncooperative Complainant																
DETAILS:																
<b>HOMICIDE</b>																
Subject; <u>EFFORTS TO IDENTIFY LEON, AND SHARON RAMROOP</u>																
On July 7, 1989, the undersigned and Det. Horn responded to the 43rd. Det. Sqd., and researched missing persons reports in search of Sharon Ramroop, and complaint reports relative possession of rifles and/or firearms in the vicinity of Watson and Boynton Avenues.																
This search revealed that a Sharon Bassant, <del>P. Bassant</del> , had been arrested for attempted murder on April 4, 1989, and that a missing/ unidentified report was filed because the family of this juvenile had not been notified. It was further revealed that Sharon Bassant had given an address of <del>1111 Boynton Avenue</del> . (see attached-61 # 6863, 43 Pct.)																
(The search for Leon proved negative at this time.)																
Sharon Bassant had been attested with three other companions; Melody Rivera, of <del>1111 Boynton Avenue</del> , Monica Bridgall, of <del>1111 Boynton Avenue</del> , and Shakib Live, of <del>1111 Boynton Avenue</del> .																
Case active.																
Reporting Officer's Name - Signature - Command Det. <i>[Signature]</i> 45 Sqd.				Name Printed <b>Serrano</b>				Tax Registry No. 845145		Supervisor's Signature <i>[Signature]</i>		C.O.'s Initials				
1		2		3		4		5		6		7				

RJ-000581



NEW YORK STATE PD 313-091A (Rev. 1-6-83)		Crime	HOMICIDE		Pct	45	OC	Complainant No.	5948	Date of This Report	7-7-89
Date of Orig Report	7-3-89	Date Assigned	7-3-89	Case No.	840	Unit Reporting	45 Det. Squad		Follow-Up No.	28	
Complainant's Name - Last, First, MI						Victim's Name - if Different					
PENNY						Sean Victor Worrell					
Last Name, First, MI						Address, include City, State, Zip					
Home Telephone						Business Telephone		Position / Relationship		Sex	Age
Total No. of Perpetrators		Wanted	Arrested	Weapon		Describe Weapon (If firearm, give color, make, caliber, type, model, etc.)					
				<input type="checkbox"/> Used <input type="checkbox"/> Possessed							
Wanted		Arrested	Last Name, First, MI		Address, include City, State, Zip						
<input type="checkbox"/>		<input type="checkbox"/>									
Sex	Race	Date of Birth	Age	Height	Weight	Eye Color	Hair Color	Hair Length	Facial Hair	NYSID No.	Ch
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	CH
<input type="checkbox"/> Eyeglasses <input type="checkbox"/> Sunglasses		Clothing Description, Scars, Marks, M.O., Etc. (Continue in "Details")									
Nicknames, First Name, Alias											
Wanted		Arrested	Last Name, First, MI		Address, include City, State, Zip						
<input type="checkbox"/>		<input type="checkbox"/>									
Sex	Race	Date of Birth	Age	Height	Weight	Eye Color	Hair Color	Hair Length	Facial Hair	NYSID No.	CHO
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	CHO
<input type="checkbox"/> Eyeglasses <input type="checkbox"/> Sunglasses		Clothing Description, Scars, Marks, M.O., Etc. (Continue in "Details")									
Nicknames, First Name, Alias											
AREA WITHIN BOX FOR DETECTIVE/LATENT FINGERPRINT OFFICER ONLY. THIS BOX WILL BE UTILIZED BY INVESTIGATOR WHENEVER POSSIBLE AND MUST BE FULLY COMPLETED WHEN USING THIS FORM TO CLOSE A CASE "NO RESULTS."											
Comp Interviewed		In Person	By Phone	Date	Time	Results: Same as Comp. Report - Different (Explain in Details)					
<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/> <input type="checkbox"/>					
Witness Interviewed		In Person	By Phone	Date	Time	Results: Same as Comp. Report - Different (Explain in Details)					
<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/> <input type="checkbox"/>					
Canvass Conducted		If Yes - Make Entry in Body Re: Time, Date, Names, Addresses, Results				Crime Scene Visited		If Yes - Make Entry in Details Re: Time, Date, Evidence Obtained			
<input type="checkbox"/> Yes <input type="checkbox"/> No						<input type="checkbox"/> Yes <input type="checkbox"/> No					
Complainant Viewed Photos		Results:									
<input type="checkbox"/> Yes <input type="checkbox"/> Refused <input type="checkbox"/> Future											
Witness Viewed Photos		Results:									
<input type="checkbox"/> Yes <input type="checkbox"/> Refused <input type="checkbox"/> Future											
Crime Scene Dusted		By (Enter Results in Details)				Crime Scene Photos		By (Enter Results in Details)			
<input type="checkbox"/> Yes <input type="checkbox"/> No						<input type="checkbox"/> Yes <input type="checkbox"/> No					
If Closing Case "No Results," Check Appropriate Box and State Justification in Details: <input type="checkbox"/> C-1 Improper Referral <input type="checkbox"/> C-2 Inaccurate Facts <input type="checkbox"/> C-3 No Evidence / Can't ID <input type="checkbox"/> C-4 Uncooperative Complainant											
DETAILS: HOMICIDE											
Subject: MEETING WITH MR. ESCO BLAYLOCK											
In an attempt to further identify "Leon", the undersigned met with Mr. Blaylock at the Whitestone Cinema on July 6, 1989, at approximately 2200 hrs. He was further questioned about Leon. Mr. Blaylock said that Leon had a girlfriend named Sharon Ramroop, an Indian girl about 5' 7", thinly built, and long black hair, who lived on Watson Avenue and Manor Avenue. He said that Ms. Ramroop had been reported missing earlier this year; that she was missing for about four months; that she usually met Leon on the corner of Watson and Boynton Avenue; and that he used to see them together, on an average of three times a week.											
Mr. Esco Blaylock said that Leon had been arrested for possession of a rifle in February, 1989.											
Following this interview, the undersigned conducted a canvass of the vicinity of Watson and Manor Aves., but met with negative results.											
Case active.											
Reporting Officer's Rank - Signature - Command		Name Printed		Tax Registry No.		Supervisor's Signature		C.O.'s Initials			
Det. [Signature] 45 Sqd		Serrano		815145		[Signature]					
Choice 1		Choice 2		Perp 1		Perp 2		Perp 1		Perp 2	

RJ-000917



HOMICIDE

45

5948

7-10

of Orig Report 7-3-89 Date Assigned 7-3-89 Co 0 Unit Reporting 45 Det. Squad Follow-Up No. 33

Complainant's Name - Last, First, MI. PSNY. Victim's Name - If Different Sean Victor Worrell

Last Name, First, MI		Address, Include City, State, Zip				Apt. No.
Home Telephone		Business Telephone		Position / Relationship	Sex	Race
Date of Birth		Age		PERP		
Total No. of Perpetrators	Wanted	Arrested	Weapon		Describe Weapon (If firearm, give color, make, calibre, type, model, etc.)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Used <input type="checkbox"/> Possessed			
Wanted	Arrested	Last Name, First, MI		Address, Include City, State, Zip		Apt. No.
<input type="checkbox"/>	<input type="checkbox"/>					Res. Pct.
Sex	Race	Date of Birth	Age	Height	Weight	Eye Color
<input type="checkbox"/> Eyeglasses <input type="checkbox"/> Sunglasses		Clothing Description, Scars, Marks, M.O., Etc. (Continue in "Details")				
Nickname, First Name, Alias						
Wanted	Arrested	Last Name, First, MI		Address, Include City, State, Zip		Apt. No.
<input type="checkbox"/>	<input type="checkbox"/>					Res. Pct.
Sex	Race	Date of Birth	Age	Height	Weight	Eye Color
<input type="checkbox"/> Eyeglasses <input type="checkbox"/> Sunglasses		Clothing Description, Scars, Marks, M.O., Etc. (Continue in "Details")				
Nickname, First Name, Alias						

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Comp. Interviewed	In Person	By Phone	Date	Time	Results: Same as Comp. Report - Different (Explain in Details)
<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>
Witness Interviewed	In Person	By Phone	Date	Time	Results: Same as Comp. Report - Different (Explain in Details)
<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>
Canvass Conducted	If Yes - Make Entry in Body Re: Time, Date, Names, Addresses, Results			Crime Scene Visited	If Yes - Make Entry in Details Re: Time, Date, Evidence Obtained
<input type="checkbox"/> Yes <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No	
Complainant Viewed Photos	Results:				
<input type="checkbox"/> Yes <input type="checkbox"/> Refused <input type="checkbox"/> Future					
Witness Viewed Photos	Results:				
<input type="checkbox"/> Yes <input type="checkbox"/> Refused <input type="checkbox"/> Future					
Crime Scene Dated	By (Enter Results in Details)		Crime Scene Photos	By (Enter Results in Details)	
<input type="checkbox"/> Yes <input type="checkbox"/> No			<input type="checkbox"/> Yes <input type="checkbox"/> No		
If Closing Case "No Results," Check Appropriate Box and State Justification in Details:					
<input type="checkbox"/> C-1 Improper Referral <input type="checkbox"/> C-2 Inaccurate Facts <input type="checkbox"/> C-3 No Evidence / Can't ID <input type="checkbox"/> C-4 Uncooperative Complainant					

DETAILS:

HOMICIDE

Subject: IDENTIFICATION OF S. RAMROOP.

On July 10, 1989, at approximately 0930 hrs., I responded to [redacted], and interviewed Mrs. J. Bhimsen, of [redacted]. Mrs. Bhimsen stated that she was the mother of S. Ramroop; that she had reported her daughter missing in the 49th Pct., and that her daughter had a boyfriend by the name of Anthony, a M/H/ 5' 1", who moved to Puerto Rico.

I then interviewed Ms. S. Ramroop, from above location, in the presence of Mrs. Bhimsen. S. said she knew B. Blaylock, having attended PS. 123 with him. She said that she knew a Leon, a M/ of Jamaican and Indian Extraction, who drove a gold Maxima; a flashy dresser who wore baggy pants and sported a flat top haircut. She said that Leon usually came around at night and hung around the record store on Westchester Avenue. She said that Leon had a girlfriend named Tamy, who went to California. She said that Leon had a brother who drove a Black Maxima; she further described Leon as 5' 10" tall. Ms. Ramroop said that the last time she had seen Leon was in April, 1989.

Case active.

Reporting Officer's Name - Signature - Command	Name Printed	Tax Registry No.	Supervisor's Signature	C.O.'s Initials
Det. [Signature] 45 Sqd.	Serrano		[Signature]	
Choice 1	Choice 2	Perp 1	Perp 2	Perp 3

RJ-000087



**PICTURE FILE SEARCH  
REPORT**  
PD 373-092 (9-87)-24

WITNESS SURNAME	FIRST NAME	M/I	ADDRESS	INVESTIGATOR ASSIGNED	CASE NO.	OFFICER ASSIGNED
Caro, Robert	Robert	J	1245	Robert Caro	13	Robert Caro
RES. PCT.	CRIME	PCT. OF OCCUR.	DATE OF OCCUR.	BI NO.	DATE	DATE
1245	Caro	43	7/3/89	5748	11/18	11/18
DATE APPEARED	TIME	APPOINTMENT	MEANS OF TRANSPORT	FILE USED	CATCH	ORACLE
1245	1245	YES	NO	NO	NO	NO
WITNESS RESULTS	POSITIVE I.D.	PROBABLE I.D.	POSSIBLE I.D.	I.D. SUBSTANTIATED	I.D. UNSUBSTANTIATED	OTHER
NO	NO	NO	NO	NO	NO	NO
IDENTIFICATION OF PICTURES SEEN (REEL NO., FILE NO., ETC.)	8011B63					

ARREST EFFECTED ☐ YES ☐ NO, BASED ON I.D. ☐ YES ☐ NO, NO. OF PERSONS ARRESTED

REMARKS:

17-25

INVESTIGATOR ASSIGNED	RANK	NAME	DATE
Robert Caro	43	Robert Caro	11/18

**PICTURE FILE SEARCH  
REPORT**  
PD 373-092 (9-87)-24

WITNESS SURNAME	FIRST NAME	M/I	ADDRESS	INVESTIGATOR ASSIGNED	CASE NO.	OFFICER ASSIGNED
Hane, Robert	Robert	J	1245	Robert Caro	13	Robert Caro
RES. PCT.	CRIME	PCT. OF OCCUR.	DATE OF OCCUR.	BI NO.	DATE	DATE
1245	Caro	43	7/3/89	5748	11/18	11/18
DATE APPEARED	TIME	APPOINTMENT	MEANS OF TRANSPORT	FILE USED	CATCH	ORACLE
1245	1245	YES	NO	NO	NO	NO
WITNESS RESULTS	POSITIVE I.D.	PROBABLE I.D.	POSSIBLE I.D.	I.D. SUBSTANTIATED	I.D. UNSUBSTANTIATED	OTHER
NO	NO	NO	NO	NO	NO	NO
IDENTIFICATION OF PICTURES SEEN (REEL NO., FILE NO., ETC.)	8011B63					

ARREST EFFECTED ☐ YES ☐ NO, BASED ON I.D. ☐ YES ☐ NO, NO. OF PERSONS ARRESTED

REMARKS:

17-25

INVESTIGATOR ASSIGNED	RANK	NAME	DATE
Robert Caro	43	Robert Caro	11/18

WHITE - C.I.U. UNIT PINK - INVESTIGATOR ASSIGNED BLUE - HQ'S COORDINATOR

**PICTURE FILE SEARCH  
REPORT**  
PD 373-092 (9-87)-24

WITNESS SURNAME	FIRST NAME	M/I	ADDRESS	INVESTIGATOR ASSIGNED	CASE NO.	OFFICER ASSIGNED
Caro, Robert	Robert	J	1245	Robert Caro	13	Robert Caro
RES. PCT.	CRIME	PCT. OF OCCUR.	DATE OF OCCUR.	BI NO.	DATE	DATE
1245	Caro	43	7/3/89	5748	11/18	11/18
DATE APPEARED	TIME	APPOINTMENT	MEANS OF TRANSPORT	FILE USED	CATCH	ORACLE
1245	1245	YES	NO	NO	NO	NO
WITNESS RESULTS	POSITIVE I.D.	PROBABLE I.D.	POSSIBLE I.D.	I.D. SUBSTANTIATED	I.D. UNSUBSTANTIATED	OTHER
NO	NO	NO	NO	NO	NO	NO
IDENTIFICATION OF PICTURES SEEN (REEL NO., FILE NO., ETC.)	8011B63					

ARREST EFFECTED ☐ YES ☐ NO, BASED ON I.D. ☐ YES ☐ NO, NO. OF PERSONS ARRESTED

REMARKS:

INVESTIGATOR ASSIGNED	RANK	NAME	DATE
Robert Caro	43	Robert Caro	11/18

WHITE - C.I.U. UNIT PINK - INVESTIGATOR ASSIGNED BLUE - HQ'S COORDINATOR

**REQUEST FOR RECORDS CHECK**  
PD 349-161 (6-86)-24

TO:	Aided & Account Section	Criminal Records Section	Identih-Cation Section	Photo Unit	Youth Records Unit	Other (Specify)
ITEMS REQUESTED:	Aided Case	Complaint Report	Arrest Report	Photos	Criminal Record	Other (Specify)
LAST NAME	FIRST	MIDDLE	B OR N Y S I D			
White, Robert	Robert					
SOCIAL SECURITY NUMBER	ALIASES / MAIDEN NAME					
AGE	DATE OF BIRTH	SEX	RACE	OCCUPATION		
1245	1245	M	W			
CURRENT ADDRESS						
DETAILS: (Include previous arrest information, if known, with date, precinct, arrest number and charge.)						
1245						
RANK	NAME (PRINTED)	SIGNATURE				
43	Robert Caro	Robert Caro				
COMMAND (PRINT COMPLETE NAME)		CASE LOG or COMM No	SIGNATURE OF COMMANDING			
1245		1245	1245			

Date of Orig Report <b>7-3-89</b>		Date Assigned <b>7-3-89</b>		Unit Reporting <b>45 Det. Squad</b>		Follow-Up No. <b>34</b>		micide <b>45</b>		7-11-89	
Complainant's Name - Last, First, MI <b>PSNY.</b>						Victim's Name - If Different <b>Sean Victor Worrell</b>					
Last Name, First, MI						Address, include City, State, Zip					
Home Telephone		Business Telephone		Position / Relationship		Sex Race		Date of Birth		Age	
Total No. of Perpetrators		Wanted		Arrested		Weapon <input type="checkbox"/> Used <input type="checkbox"/> Possessed		Describe Weapon (If firearm, give color, make, calibre, type, model, etc.)			
Wanted <input type="checkbox"/>		Arrested <input type="checkbox"/>		Last Name, First, MI		Address, include City, State, Zip		Apt. No.		Res. Pct.	
Sex Race		Date of Birth		Age Height		Weight Eye Color		Hair Color Hair Length		Facial Hair NYSID No.	
<input type="checkbox"/> Eyeglasses <input type="checkbox"/> Sunglasses		Nickname, First Name, Alias		Clothing Description, Scars, Marks, M.O., Etc. (Continue in "Details")							
Wanted <input type="checkbox"/>		Arrested <input type="checkbox"/>		Last Name, First, MI		Address, include City, State, Zip		Apt. No.		Res. Pct.	
Sex Race		Date of Birth		Age Height		Weight Eye Color		Hair Color Hair Length		Facial Hair NYSID No.	
<input type="checkbox"/> Eyeglasses <input type="checkbox"/> Sunglasses		Nickname, First Name, Alias		Clothing Description, Scars, Marks, M.O., Etc. (Continue in "Details")							
<b>AREA WITHIN BOX FOR DETECTIVE/LATENT FINGERPRINT OFFICER ONLY. THIS BOX WILL BE UTILIZED BY INVESTIGATOR WHENEVER POSSIBLE AND MUST BE FULLY COMPLETED WHEN USING THIS FORM TO CLOSE A CASE "NO RESULTS."</b>											
Comp. Interviewed <input type="checkbox"/> Yes <input type="checkbox"/> No		In Person <input type="checkbox"/>		By Phone <input type="checkbox"/>		Date		Time		Results: Same as Comp. Report - Different (Explain in Details)	
Witness Interviewed <input type="checkbox"/> Yes <input type="checkbox"/> No		In Person <input type="checkbox"/>		By Phone <input type="checkbox"/>		Date		Time		Results: Same as Comp. Report - Different (Explain in Details)	
Cannvass Conducted <input type="checkbox"/> Yes <input type="checkbox"/> No		If Yes - Make Entry in Body Re: Time, Date, Name, Addresses, Results				Crime Scene Visited <input type="checkbox"/> Yes <input type="checkbox"/> No		If Yes - Make Entry in Details Re: Time, Date, Evidence Obtained			
Complainant Viewed Photos <input type="checkbox"/> Yes <input type="checkbox"/> Refused <input type="checkbox"/> Future		Results:									
Witness Viewed Photos <input type="checkbox"/> Yes <input type="checkbox"/> Refused <input type="checkbox"/> Future		Results:									
Crime Scene Dusted <input type="checkbox"/> Yes <input type="checkbox"/> No		By (Enter Results in Details)				Crime Scene Photos <input type="checkbox"/> Yes <input type="checkbox"/> No		By (Enter Results in Details)			
If Closing Case "No Results," Check Appropriate Box and State Justification in Details: <input type="checkbox"/> C-1 Improper Referral <input type="checkbox"/> C-2 Inaccurate Facts <input type="checkbox"/> C-3 No Evidence/Can't ID <input type="checkbox"/> C-4 Uncooperative Complainant											
<b>DETAILS:</b> <b>HOMICIDE</b> <b>Subject: CONFRONTATION OF E. BLAYLOCK AND S. RAMROOP.</b> On July 11, 1989, in an effort to further identify "Leon", E. and S. were confronted in this office. E. and S. exchanged information relative to the description originally furnished by various witnesses. It now appears that E. Blaylock knows the perpetrator as Leon, and S. Ramroop knew the perpetrator as Ricky. <b>Case active.</b>											
Reporting Officer's Rank - Signature - Command <b>Det. [Signature]</b>				Name Printed <b>Serrano</b>		Tax Registry No. <b>[Redacted]</b>		Supervisor's Signature <b>[Signature]</b>		C.O.'s Initials	
Choice 1		Choice 2		Perp 1		Perp 2		Perp 1		Perp 2	

RJ-000088

34



Date of Orig Report <b>7-3-89</b>		Date Assigned <b>7-3-89</b>		Case No. <b>840</b>		Unit Reporting <b>45 Det. Squad</b>		Date of 1st Report <b>7-11-89</b>		14 PERP 1			
Complainant's Name - Last, First, MI <b>PSNY.</b>						Victim's Name - If Different <b>Sean Victor Worrell</b>						15 PERP 1	
Last Name, First, MI						Address, Include City, State, Zip						Apt. No.	
Home Telephone		Business Telephone		Position / Relationship		Sex		Race		Date of Birth		Age	
Total No. of Perpetrators		Wanted		Arrested		Weapon <input type="checkbox"/> Used <input type="checkbox"/> Possessed		Describe Weapon (If firearm, give color, make, calibre, type, model, etc.)					
Wanted		Arrested		Last Name, First, MI		Address, Include City, State, Zip						Apt. No.	
Sex		Race		Date of Birth		Age		Height		Weight		Eye Color	
Hair Color		Hair Length		Facial Hair		NYSID No.		16 CHOICE 1					
<input type="checkbox"/> Eyeglasses <input type="checkbox"/> Sunglasses		Clothing Description, Scars, Marks, M.O., Etc. (Continue in "Details")		17 CHOICE 2									
Wanted		Arrested		Last Name, First, MI		Address, Include City, State, Zip						Apt. No.	
Sex		Race		Date of Birth		Age		Height		Weight		Eye Color	
Hair Color		Hair Length		Facial Hair		NYSID No.		18 CHOICE 1					
<input type="checkbox"/> Eyeglasses <input type="checkbox"/> Sunglasses		Nickname, First Name		19 CHOICE 2									

**AREA WITHIN BOX FOR POSSIBLE AND MUST BE**

Comp. Interviewed ☐ Yes ☐ No ☐ In Pers. ☐ Yes ☐ No ☐

Witness Interviewed ☐ Yes ☐ No ☐ In Pers. ☐ Yes ☐ No ☐

Canvass Conducted ☐ Yes ☐ No ☐ If Yes - In ☐ No

Complainant Viewed Photos ☐ Yes ☐ Refused ☐ Future

Witness Viewed Photos ☐ Yes ☐ Refused ☐ Future

Crime Scene Dusted ☐ Yes ☐ No ☐ By (Enter Results in Details)

Crime Scene Photos ☐ Yes ☐ No ☐ By (Enter Results in Details)

If Closing Case "No Results," Check Appropriate Box and State Justification in Details:  
☐ C-1 Improper Referral ☐ C-2 Inaccurate Facts ☐ C-3 No Evidence / Can't ID ☐ C-4 Uncooperative Complainant

DETAILS:

**HOMICIDE**

**Subject: IDENTIFICATION OF "LEON".**

On July 11, 1989, at approximately 2030 hrs., **E. Blaylock** and **S. Ramroop** were taken to CATCH. by the undersigned in the company of Det. Horn.

Both, **E. Blaylock** and **S. Ramroop** viewed photos. **S. Ramroop** identified a photo as that of Manuel Jimenez, indicating that his brother was Ricky, the person being sought. A search of the files produced a photograph of Ricardo Jimenez, M/H/, DOB. 3-30-68, NISIS # 5522945Z.

Mr. **E. Blaylock** identified the photo of Ricardo Jimenez as the shooter in this case, and the person known to him as "Leon". Ms. **S. Ramroop** stated that she knew this individual as "Ricky".

Investigation revealed that Ricardo Jimenez' last known address is 875 Taylor Avenue.

Case active.

Reporting Officer's Rank - Signature - Command <b>Det. [Signature] 45 Sqd.</b>		Name Printed <b>Serrano</b>		Tax Registry No. <b>[Redacted]</b>		Supervisor's Signature <b>[Signature]</b>		C.O.'s Initials	
Choice 1		Choice 2		Perp 1		Perp 2		Perp 3	

RJ-000089

35

PAGE 1 OF 1		PAGE 1	
Date of Orig Report 7-3-89		Date Assigned 7-3-89	
Case No. 840		Unit Reporting 45 Det. Squad	
Complainant's Name - Last, First, MI. PSNY.		Victim's Name - If Different Unidentified	
Last Name, First, MI.		Address, include City, State, Zip	
Home Telephone		Business Telephone	
Position / Relationship		Sex Race	
Date of Birth		Age	
Total No. of Perpetrators		Wanted Arrested	
Weapon		Describe Weapon (If firearm, give color, make, caliber, type, model, etc.)	
Used Possessed			
Wanted Arrested		Last Name, First, MI.	
Address, include City, State, Zip		Apt. No.	
Res. Pct.			
Sex Race		Date of Birth	
Age Height		Weight	
Eye Color		Hair Color	
Hair Length		Facial Hair	
NYSID No.			
Eyeglasses Sunglasses		Clothing Description	
Nickname, First Name, Alias		Scars, Marks, M.O., Etc. (Continue in "Details")	
Wanted Arrested		Last Name, First, MI.	
Address, include City, State, Zip		Apt. No.	
Res. Pct.			
Sex Race		Date of Birth	
Age Height		Weight	
Eye Color		Hair Color	
Hair Length		Facial Hair	
NYSID No.			
Eyeglasses Sunglasses		Clothing Description	
Nickname, First Name, Alias		Scars, Marks, M.O., Etc. (Continue in "Details")	
<b>AREA WITHIN BOX FOR DETECTIVE/LATENT FINGERPRINT OF ICER ONLY. THIS BOX WILL BE UTILIZED BY INVESTIGATOR WHENEVER POSSIBLE AND MUST BE FULLY COMPLETED WHEN USING THIS FORM TO CLOSE A CASE "NO RESULTS."</b>			
Comp. Interviewed		In Person	
By Phone		Date	
Time		Results: Same as Comp. Report - Different (Explain in Details)	
Witness Interviewed		In Person	
By Phone		Date	
Time		Results: Same as Comp. Report - Different (Explain in Details)	
Conv. Conducted		If Yes - Make Entry in Body Rpt: Time, Date, Names, Addresses, Results	
Crime Scene Visited		If Yes - Make Entry in Details Rpt: Time, Date, Evidence Obtained	
Complainant Viewed Photos		Results:	
Witness Viewed Photos		Results:	
Crime Scene Dated		By (Enter Results in Details)	
Crime Scene Notes		By (Enter Results in Details)	
If Closing Case "No Results," Check Appropriate Box and State Justification in Details: <input type="checkbox"/> C-1 Improper Referral <input type="checkbox"/> C-2 Inaccurate Facts <input type="checkbox"/> C-3 No Evidence / Can't ID <input type="checkbox"/> C-4 Uncooperative Complainant			

**DETAILS:**

**HOMICIDE**

Subject: INTERVIEW OF WITNESS: JAMES WILLIAMS

On July 3, 1989, and about 1630 hrs., I interviewed Mr. Williams at the Whitestone Cinema. He said that at the time of this incident he was working behind the counter, opposite to where the argument erupted. Two males, Black, were arguing about who was in line first. One guy said "I'll come back and shoot your ass", he had already purchased some pop-corn and then left the building. The other male stayed, got his food and went back to the theater.

He said that the argument lasted for a minute or so, and that they had words in Rastafarian.

He said that Linda served the male who exited the building, and Shawn served the male who went back into the theater.

Case active.

Reporting Officer's Rank - Signature - Command	Name Printed	Tax Registry No.	Supervisor's Signature	C.O.'s Initials
<i>[Signature]</i>	Serrano	845145	<i>[Signature]</i>	
Choice - Choice	Page 1	Page 2	Page 1	Page 2

RJ-000907



Date of Orig Report <b>7-3-89</b>		Date Assigned <b>7-3-89</b>		Unit Reporting <b>840</b>		45		7-17-89		PCRP 1
Complainant's Name - Last, First, MI <b>PSNY.</b>				Victim's Name - If Different <b>Sean Victor Worrell</b>				Follow-Up No. <b>40</b>		PERP 2
Last Name, First, MI <b>PSNY.</b>				Address, include City, State, Zip				Apt. No.		PERP 1
Home Telephone		Business Telephone		Position / Relationship		Sex Race		Date of Birth	Age	PERP 2
Total No. of Perpetrators		Wanted		Arrested		Weapon <input type="checkbox"/> Used <input type="checkbox"/> Possessed		Describe Weapon (If firearm, give color, make, caliber, type, model, etc.)		
Wanted		Arrested		Last Name, First, MI		Address, include City, State, Zip		Apt. No.		Res. Pct.
Sex		Race		Date of Birth		Age		Height		Weight
Eye Color		Hair Color		Hair Length		Facial Hair		NYSID No.		CHOICE 1
<input type="checkbox"/> Eyeglasses <input type="checkbox"/> Sunglasses		Nickname, First Name, Alias		Clothing Description, Scars, Marks, M.O., Etc. (Continue in "Details"):						CHOICE 2
Wanted		Arrested		Last Name, First, MI		Address, include City, State, Zip		Apt. No.		Res. Pct.
Sex		Race		Date of Birth		Age		Height		Weight
Eye Color		Hair Color		Hair Length		Facial Hair		NYSID No.		CHOICE 1
<input type="checkbox"/> Eyeglasses <input type="checkbox"/> Sunglasses		Nickname, First Name, Alias		Clothing Description, Scars, Marks, M.O., Etc. (Continue in "Details"):						CHOICE 2
<b>AREA WITHIN BOX FOR DETECTIVE/LATENT FINGERPRINT OFFICER ONLY. THIS BOX WILL BE UTILIZED BY INVESTIGATOR WHENEVER POSSIBLE AND MUST BE FULLY COMPLETED WHEN USING THIS FORM TO CLOSE A CASE "NO RESULTS."</b>										
Comp. Interviewed <input type="checkbox"/> Yes <input type="checkbox"/> No		In Person <input type="checkbox"/> Yes <input type="checkbox"/> No		By Phone <input type="checkbox"/> Yes <input type="checkbox"/> No		Date		Time		Results: Same as Comp. Report - Different (Explain in Details)
Witness Interviewed <input type="checkbox"/> Yes <input type="checkbox"/> No		In Person <input type="checkbox"/> Yes <input type="checkbox"/> No		By Phone <input type="checkbox"/> Yes <input type="checkbox"/> No		Date		Time		Results: Same as Comp. Report - Different (Explain in Details)
Canvass Conducted <input type="checkbox"/> Yes <input type="checkbox"/> No		If Yes - Make Entry in Body Re: Time, Date, Names, Addresses, Results				Crime Scene Visited <input type="checkbox"/> Yes <input type="checkbox"/> No		If Yes - Make Entry in Details Re: Time, Date, Evidence Obtained		
Complainant Viewed Photos <input type="checkbox"/> Yes <input type="checkbox"/> Refused <input type="checkbox"/> Future		Results:								
Witness Viewed Photos <input type="checkbox"/> Yes <input type="checkbox"/> Refused <input type="checkbox"/> Future		Results:								
Crime Scene Dusted <input type="checkbox"/> Yes <input type="checkbox"/> No		By (Enter Results in Details)				Crime Scene Photos <input type="checkbox"/> Yes <input type="checkbox"/> No		By (Enter Results in Details)		
If Closing Case "No Results," Check Appropriate Box and State Justification in Details: <input type="checkbox"/> C-1 Improper Referral <input type="checkbox"/> C-2 Inaccurate Facts <input type="checkbox"/> C-3 No Evidence / Can't ID <input type="checkbox"/> C-4 Uncooperative Complainant										
<b>DETAILS:</b> <p style="text-align: center;"><b>HOMICIDE</b></p> <p><b>Subject: INTERVIEW OF MRS. L. [REDACTED] SALTER [REDACTED]</b></p> <p>On July 17, 1989, at about 1250 hrs., I interviewed Mrs. L. [REDACTED] Salter at her residence. She said that she was working behind the counter at the concession stand on the night of this incident.</p> <p>She said that she overheard a verbal altercation between two males whom she described as: sporting flat-top haircuts, and wearing a lot of gold. After the argument, the tall Black male left the stand but returned later and demanded to be served by Shawn. Shawn refused to serve him, and words were exchanged. She said that she served the tall male to avoid any further confrontation.</p> <p>Mrs. Salter said that both, the victim and the other male had Jamaican accents, and described them as follows:</p> <p># 1. M/B/ Jamaican, tall and thin, approximately 5' 10", 160 to 165 lbs., in his early twenties, and wearing a white, long sleeve shirt and long pants. (wore 2 gold teeth) (connected rings on both hands)</p> <p># 2. The victim, very light complexion, approximately 5' 9", and wore a lot of gold</p> <p>Mrs. Salter said that she was an amateur artist and will attempt to draw the face of the tall and skinny male.</p> <p>I showed Mrs. Salter a photo of Ricardo Jimenez. She said that she had seen the male on other occasions but he was not one the males which had the argument at the concession stand. <b>CASE ACTIVE.</b></p>										
Reporting Officer's Rank / Signature - Command <b>Det. [Signature] 45 Sgd.</b>		Name Printed <b>Serrano</b>		Tax Registry No.		Supervisor's Signature <b>[Signature]</b>		C.O.'s Initials		
Choice 1 <input type="checkbox"/>		Choice 2 <input type="checkbox"/>		Perp 1 <input type="checkbox"/>		Perp 2 <input type="checkbox"/>		Perp 1 <input type="checkbox"/>		Perp 2 <input type="checkbox"/>

## RJ-000880



detective that Mr. Jimenez was not one of the men involved in the argument at the concession stand on July 3, 1989.

4. Until now, I have not been contacted by anyone representing Mr. Jimenez. If I had been asked to testify about what I saw at the theater on July 3, 1989, I would have been willing to do so.

  
LINDA SALTER

Sworn before me this 27<sup>th</sup>  
day of October, 2011

  
NOTARY PUBLIC

KATHLEEN A. HOOD  
Notary Public, State of New York  
No. 02HO6006373  
Qualified in Rockland County  
Commission Expires May 4, 2014

INFORMATIONAL		FD 313 (Rev. 1-86)		Pct		Complaint No		Date of This Report		
Date of Orig. Report		Date Assigned		Case No		Unit Reporting		Follow Up No		
7/3/89		7/3/89		840		43rd DET. SQD		6		
Complainant's Name - Last, First, MI					Victim's Name - If Different					
P.S.N.Y. For					Unidentified Male					
Last Name, First, MI					Address, Include City, State, Zip					
Home Telephone		Business Telephone		Position / Relationship		Sex		Race		
Wanted		Arrested		Weapon		Describe Weapon (If firearm give color, make, calibre, type, model, etc.)				
Wanted		Arrested		Last Name, First, MI		Address, Include City, State, Zip		Apt. No.		
Race		Date of Birth		Age		Height		Weight		
Eye Color		Hair Color		Hair Length		Facial Hair		NYSID No.		
Eyeglasses		Sunglasses		Clothing Description						
Tuckname, First Name, Alias		Scars, Marks, M.O., etc.		(Continue on Detail)						
Wanted		Arrested		Last Name, First, MI		Address, Include City, State, Zip		Apt. No.		
Race		Date of Birth		Age		Height		Weight		
Eye Color		Hair Color		Hair Length		Facial Hair		NYSID No.		
Eyeglasses		Sunglasses		Clothing Description						
Tuckname, First Name, Alias		Scars, Marks, M.O., etc.		(Continue on Detail)						
<p>AREA WITHIN BOX FOR DETECTIVE/LATENT FINGERPRINT OFFICER ONLY. THIS BOX WILL BE UTILIZED BY INVESTIGATOR WHENEVER POSSIBLE AND MUST BE FULLY COMPLETED WHEN USING THIS FORM TO CLOSE A CASE "NO RESULTS."</p>										
Victim's Interviewed		By		Date		Time		Results		
Yes		No								
Witnesses Interviewed		By		Date		Time		Results		
Yes		No								
Victim's Photographed		By		Date		Time		Results		
Yes		No								
Complainant Viewed Photos		By		Date		Time		Results		
Yes		No								
Witness Viewed Photos		By		Date		Time		Results		
Yes		No								
Crime Scene Drawn		By		Date		Time		Results		
Yes		No								
<p>If Closing Case (No Results) Check Appropriate Box and State Justification in Detail:</p> <p><input type="checkbox"/> C-1 Improper Petition <input type="checkbox"/> C-2 Inadequate Facts <input type="checkbox"/> C-3 No Evidence <input type="checkbox"/> C-4 Uncooperative Complainant</p>										
DETAILS					INVESTIGATION: HOMICIDE/GUN					
					ACTIVE CASE					
SUBJECT: INTERVIEW OF HEAD OF SECURITY, Mr Gregory Jones at Whitestone Cinemas										
<p>1. On this date 7/3/89 at about 02:10 Hrs., the undersigned officer interviewed Head of Security, Mr. Gregory Jones, [redacted] at the Whitestone Cinemas Tel. 409-0166. He works for Aero-Investigations and Security Services, Inc. 2110-4 Smithtown Ave., Ronkonkoma, N.Y. 11779 Tel. 516 737-3366 at night and during the day is a N.Y.S. Correction Officer, [redacted] and works at Sing Sing Prison, Tel. 914 941-0108.</p>										
<p>2. He states the following. He was on outside patrol duty in a company auto #188, N.Y.S. Plate # FXE 339 and was parked in a handicapped parking spot located near outside door next to main office. When he received over his radio, reports of shots fired inside theater #1. I then back out of spot and another security guard, [redacted] got inside auto. We then proceeded to rear of theater #1 looking for the person in white clothes who may have shot the victim inside theater. But hundreds of people were running out of both rear doors, we both then entered theater #1 and noticed a victim, a black male, was lying on the floor in the aisle, face up, head of body was facing down toward stage/screen. An off duty Police Officer, Perez recovered a 38 cal. revolver from victim and handed over to me. He further states that there were two off duty E.M.S. administering C.P.R. I then opened the 38 cal. revolver which contained 4 live rounds, one spent round and one empty chamber, then removed rounds from weapon which I later handed over to Uniform Police Officers from the 43rd Pct. Nothing further was stated at this time.</p>										
<p>3. Request case remain active pending further investigation.</p>										
ACTIVE CASE										
Reporting Officer's Rank - Signature - Command					Name Printed		Tax Registry No		Supervisor's Signature	
DET. [Signature] 43SQD					MINTING		853456		[Signature]	
CHOICE 1					CHOICE 2		CHOICE 3		CHOICE 4	

RJ-000905



<b>Homicide</b>				45	5948	7-3-89	14
Date of Orig Report <b>7-3-89</b>		Date Assigned <b>7-3-89</b>		Case No <b>840</b>		Unit Reporting <b>45 Det. Squad</b>	
Complainant's Name - Last, First, MI <b>PSNY.</b>				Victim's Name - If Different <b>Unidentified</b>			
Last Name, First, MI						Address, Include City, State, Zip	
Home Telephone		Business Telephone		Position / Relationship		Sex	Race
Date of Birth		Age		Date of Birth		Age	
Total No. of Perpetrators		Wanted		Arrested		Weapon	
						Describe Weapon (If firearm, give color, make, calibre, type, model etc.)	
Wanted		Arrested		Last Name, First, MI		Address, Include City, State, Zip	
Sex		Race		Date of Birth		Age	
Height		Weight		Eye Color		Hair Color	
Hair Length		Facial Hair		NYSID No.			
Eyeglasses		Sunglasses		Clothing Description,			
Nickname, First Name, Alias		Scars, Marks, M.O., Etc.		(Continue in "Details")			
Wanted		Arrested		Last Name, First, MI		Address, Include City, State, Zip	
Sex		Race		Date of Birth		Age	
Height		Weight		Eye Color		Hair Color	
Hair Length		Facial Hair		NYSID No.			
Eyeglasses		Sunglasses		Clothing Description,			
Nickname, First Name, Alias		Scars, Marks, M.O., Etc.		(Continue in "Details")			
AREA WITHIN BOX FOR DETECTIVE/LATENT FINGERPRINT OFFICER ONLY. THIS BOX WILL BE UTILIZED BY INVESTIGATOR WHENEVER POSSIBLE AND MUST BE FULLY COMPLETED WHEN USING THIS FORM TO CLOSE A CASE "NO RESULTS."							
Comp. Interviewed		In Person		By Phone		Date	
Time		Results: Same as Comp. Report - Different (Explain in Details)					
Witness Interviewed		In Person		By Phone		Date	
Time		Results: Same as Comp. Report - Different (Explain in Details)					
Canvass Conducted		If Yes - Make Entry in Body Re: Time, Date, Names, Addresses, Results		Crime Scene Visited		If Yes - Make Entry in Details Re: Time, Date, Evidence Obtained	
Complainant Viewed Photos		Results:					
Witness Viewed Photos		Results:					
Crime Scene Dusted		By (Enter Results in Details)		Crime Scene Photos		By (Enter Results in Details)	
If Closing Case "No Results." Check Appropriate Box and State Justification in Details:							
C-1 Improper Referral		C-2 Inaccurate Facts		C-3 No Evidence/Can't ID		C-4 Uncooperative Complainant	
DETAILS.							
<b>HOMICIDE</b>							
Subject: INTERVIEW OF WITNESS: <b>M/B</b>							
Chief of Security at the Whitestone Cinema. 409-0208							
On July 3, 1989, and about 1700 hrs., I interviewed Mr. <b>[REDACTED]</b> at the Whitestone Cinema. He said that he was on duty on the date and time of this incident, when he heard that someone had been shot in theater # 1. He then ran over to the theater and saw a male Black, dark skin, wearing white shorts and a white top, he was approximately 5' 8" to 5' 10", 175-180 Lbs. Mr. <b>[REDACTED]</b> followed this male and saw him getting into a 2 Dr. small car, maybe a Sentra. Mr. <b>[REDACTED]</b> exited via the side door of the theater.							
Case active.							
Reporting Officer's Rank - Signature - Comm. No.				Name Printed		Tax Registry No.	
Det. <b>[Signature]</b> 45 Sqd.				Serrano		845745	
Supervisor's Signature				C.O.'s Initials			

-----X

THE PEOPLE OF THE STATE OF NEW YORK,	:	
	:	
Respondent,	:	
	:	<u>AFFIDAVIT</u>
	:	
-against-	:	Ind. No. 3825/06
	:	
	:	
RICARDO JIMENEZ,	:	
	:	
Defendant.	:	

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GREGORY JONES, being duly sworn, under penalty of perjury hereby  
deposes and says:

1. On July 3, 1989, I was the Chief of Security at the Whitestone Cinemas, located at 2505 Bruckner Boulevard, in the Bronx. I was employed by Aero Investigations and Security Services, the company that handled security at the theater. At that time, I was also working as a New York State Corrections Officer.

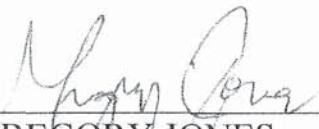
2. On July 3, 1989, I was at work at the Whitestone Cinemas. I was outside of the theater in a security vehicle. I received a radio report of shots fired inside Theater Number 1. I was joined by another security guard, Harold Hazely, and we went to the rear of the theater.



3. I saw a large number of people running out of the theater. Among those people was a black male who appeared to be in his 20s, dark complexion, approximately 5 feet 8 inches to 5 feet 10 inches tall, with a slim face. The man was dressed all in white. I noticed him because he had a gun in his hand. I saw the man get into a small car.

4. I went into Theater Number 1, where I saw the victim lying in the aisle. He head was facing down, toward the screen. Off-duty EMS workers were giving him CPR. An off-duty police officer had recovered a .38 caliber revolver from the victim and gave it to me. I removed four live rounds from the gun and I later gave it to a uniformed officer.

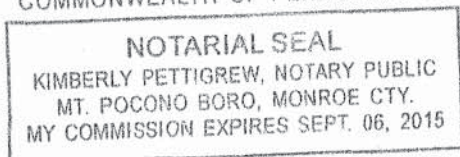
5. I spoke to the police after the shooting and told them what I saw. I was not contacted by anyone from the defense at any time prior to now. I would have been willing to testify about what I saw that night.

  
\_\_\_\_\_  
GREGORY JONES

Sworn before me this 09  
day of February, 2012

  
\_\_\_\_\_  
NOTARY PUBLIC

COMMONWEALTH OF PENNSYLVANIA



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: PART H92

-----X  
THE PEOPLE OF THE STATE OF NEW YORK

-against-

**DECISION AND ORDER**  
**Ind. 2777/07**

**RAED AYYASH,**

Defendant.

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**WEBBER, J. :**

Defendant is charged by indictment with Murder in the Second Degree (PL § 125.25[1]). By Notice of Motion dated February 19, 2008, defendant moves to dismiss the indictment on the grounds that the 19- year delay between the alleged commission of the crime in 1988 and defendant's re-arrest and indictment in 2007 violated his due process right to a prompt prosecution under New York State and United States Constitutions. Pursuant to defendant's motion, a *Singer* hearing was held before the court on August 10, 2011. The People called one witness, Detective Kevin Tracy. I find Detective Tracy credible and I make the following findings of fact and conclusions of law.

**FINDINGS OF FACT**

In December 2005, Detective Kevin Tracy of the Bronx Homicide Task Force, was assigned the unsolved homicide of Hassan Abusalem as an apprehension case. In reviewing the file, Detective Tracy learned that on September 11, 1988, two males entered the location of 2040 Bronxdale Avenue, Apt. 4J in Bronx County. In the apartment were Hassan Abusalem and his wife, Brunilda Toro-Abusalem. Hassan Abusalem was shot and killed while his wife, Brunilda, was shot, but survived the attack. The case file indicated that Ms. Toro-Abusalem stated that she



and her husband, Hassan Abusalem, were inside their residence when at approximately at 12:30 a.m. the doorbell rang. Abusalem went to the door leaving Ms. Toro-Abusalem behind in the kitchen. An unidentified male entered the residence. Ms. Toro-Abusalem heard a commotion and a loud bang. When she looked, she saw her husband on the floor. The unidentified male chased her into the bedroom. She attempted to hide under the bed but the unidentified male shot her in the head. Ms. Toro-Abusalem suffered a graze wound to the head. Abusalem crawled into the hallway and fell in front of Apt. 4G. He suffered a gunshot wound to the chest as well as a severe laceration to his throat, and puncture wounds to his torso.

Following the shooting, Ms. Toro-Abusalem as well as a neighbor, Iaisheh Mustafa, spoke to the investigating detectives. According to Detective Tracy, the case file indicated that although the two witnesses were frightened and upset, both cooperated with the detectives. Ms. Toro-Abusalem gave several interviews to the police and gave a detailed description of the two men involved. She also identified Muhammad "Mike" Abuhweig as one of the individuals involved who was known to both her and her husband.

On September 13, 1988, Iaisheh Mustafa was shown a photographic array and identified the defendant, Ayyash, as one of the two individuals involved in the shooting. Based upon her identification, defendant, Ayyash, was arrested and placed in a line-up. On September 14, 1988, Ms. Mustafa viewed the line-up and again identified Ayyash.

Despite the eyewitness accounts and the identification by Ms. Mustafa, Assistant District Attorney Risa Sugarman, chief of the Bronx District Attorney's Homicide Bureau at the time, did not authorize the arrest of Ayyash and his arrest was voided. According to Detective Tracy's review of the case file, Assistant District Attorney Sugarman was apparently displeased that the

arresting detectives did not consult with her prior to making the arrest. She also appears to have been concerned that the eyewitnesses were scared or terrified and could not be counted on to cooperate in the future. Interestingly, on October 3, 1988, after ADA Sugarman's refusal to authorize the arrest, Ms. Toro-Abusalem also viewed a photographic array and identified Ayyash as having been involved in the shooting. No further action was taken as to the defendant or the co-defendant, identified as "Mike" Abuhweig.

According to Detective Tracy, in 1997, there were some attempts to locate the witnesses as well as "Mike." These attempts were fruitless. Subsequently, in 1997, the case was transferred from the Apprehension Team to the Homicide Task Force. In 2005, when Detective Tracy took over the case, he made attempts to locate the witnesses, Ms. Toro-Abusalem and Ms. Mustafa. Ms. Toro-Abusalem was still living in New York, however, she was using a different name and was living at a different location. Ms. Mustafa was located in Jordan. Based on a license plate number as well as finger prints and a photograph for "Mike" Abuhweig, Detective Tracy was able to locate him under a different name, living in San Diego, California. Defendant Ayyash was also located in San Diego, where he was residing under his own name. Before arrangements could be made to arrange for "Mike's" return to New York, he returned to his home in Jordan. Attempts to "lure" him from Jordan to the United States and ultimately, to New York, were unsuccessful. According to Detective Tracy, no attempts were made to arrest Ayyash until "Mike" was arrested so as to not compromise the attempts to lure "Mike" back to the United States. Once it was determined that those attempts failed, Ayyash was arrested in California and extradited to New York on June 5, 2007. He was indicted on the instant charge on July 13, 2007. He was released on bail on July 22, 2008.



## CONCLUSIONS OF LAW

As stated, defendant moves to dismiss the indictment on grounds that the delay between the alleged commission of the crime in 1988 and defendant's re-arrest and indictment in 2007 violated his due process right to a prompt prosecution under New York State and United States Constitutions. For the reasons stated below, defendant's motion is granted.

An unreasonable delay in prosecuting a defendant constitutes denial of due process of law (*People v Winfrey*, 20 NY 2d 138 [1967]; *People v Singer*, 44 NY2d 241 [1978]). In *Singer*, the Court of Appeals stated:

"Delay in bringing the defendant to trial after indictment or arrest is measured against Sixth Amendment speedy trial requirement which takes into account a number of factors, including actual or potential prejudice to the defendant's case through the loss of witnesses and the dulling of memory (citations omitted). Preindictment delay, on the other hand, is governed by the due process clause which generally requires a showing of actual prejudice before dismissal would be warranted (citations omitted) . . ."

Indeed, the Court of Appeals has long held that an "unreasonable delay in prosecuting a defendant constitutes a denial of due process of law" requiring dismissal of the charges (*People v Staley*, 41 NY2d 789 [1977]). In *People v Taranovich* (37 NY2d 442 [1975]), the Court of Appeals examined a defendant's right to a speedy trial under both the federal constitution as well as New York's speedy trial statute, CPL § 30.20. The Court held that in assessing a due process right to prompt prosecution, the analysis must be in substantially the same manner as the analysis of the right to speedy trial. In *Taranovich*, the Court established five factors to be considered in determining whether there has been a denial of defendant's right to a speedy trial, which are: (1) the extent of the delay; (2) the reason for the delay; (3) the nature of the underlying charge; (4) whether or not there has been an extended period of pretrial incarceration; and (5) whether or not

there is any indication that the defense has been impaired by reason of the delay (*id.*).

### **Extent and Reason For Delay**

It is well established that when there has been a protracted delay, the burden rests solely on the People to establish good cause for the delay (*Singer*, 44 NY2d at 254; *Staley*, 41 NY2d at 792; *see also Winfrey*, 20 NY2d 138; *People v Prosser*, 309 NY 353 [1955]). Delays caused by difficulty in amassing evidence sufficient to arrest, indict or prepare the prosecution do not deprive the defendant of due process of law, even if the delay may have caused some prejudice to the defense (*Singer*, 44 NY2d at 254; *Staley*, 41 NY2d at 792; *Winfrey*, 20 NY2d at 138). Similarly, delays due to difficulties in locating a suspect may be justified as well (*See Staley* at 792). Fundamental to the analysis is that “once a person stands accused of crime, he must be prosecuted promptly. Sheer neglect or trifling however, . . . is not permissible” (*id.*).

Here, the record does not indicate any good cause excusing the 19- year delay. The record does not indicate any basis for the delay in the prosecution other than the refusal by the chief of the Bronx District Attorney’s Homicide Bureau to authorize the arrest in 1988. This however, does not explain or excuse the fact that no action was taken until 2005 which led to the defendant’s ultimate arrest in 2007.

While Detective Tracy testified that Assistant District Attorney Sugarman believed that the witnesses would not cooperate in the future due to fear for their personal safety, this testimony was apparently based upon some vague notation in the case file reviewed by Detective Tracy. The original investigating detectives did not testify at the hearing. Nor, did Assistant District Attorney Sugarman. Thus the record is devoid of any clear indication of fear on the part of the witnesses. There is also no indication that either witness was ever asked either by law enforcement or by



Assistant District Attorney Sugarman whether they would or would not be willing to testify. The record does show that both witnesses spoke to the investigating detectives on numerous occasions. Both viewed photographic arrays and line-ups following the incident. Ms. Toro-Abusalem also contacted law enforcement and gave information regarding the defendant as well as "Mike." Ms. Toro-Abusalem also "cooperated" with the police and viewed a photographic array of the defendant following the voiding of defendant's arrest.

The People's argument that the case required enhanced investigation is belied by the fact that the exact same information which was available and known to law enforcement in 2005 and 2007, was also known to them in 1988. In 2005, Detective Tracy, did nothing more than review the 1988 case folder, contact those same witnesses, obtain photographic identifications of the defendant from those witnesses and arrest the defendant. There were no additional witnesses located, nor was there any additional physical or forensic evidence found. The witnesses were available to law enforcement and to the prosecution in 1988 and 2005. The fact that there was no follow-up on the case from 1988 to 2005 appears to the court to be the result of "sheer neglect."

This Court would certainly agree that investigating and prosecuting agencies have a strong interest in conducting a complete and thorough investigation and are entitled to do so prior to arresting and charging a suspect. The need to investigate and obtain evidence is reasonable and legitimate, even if it may cause some prejudice to the defense (*People v Singer*, 44 NY2d at 254; *People v Vernace*, 96 NY2d 886 [2001]). Here, however, there is nothing to suggest that the delay was precipitated by anything other than inattention (*People v LeGrand*, 28 AD3d 318 [1<sup>st</sup> Dept 2006]).

Rather than a concern that the witnesses would not cooperate or a desire to conduct further

investigation, it appears that the case was not prosecuted in 1988 solely based upon Assistant District Attorney Sugarman's having felt "slighted" that she was not consulted prior to the defendant's arrest. This appears true given the lack of any conversation between Assistant District Attorney Sugarman and the witnesses regarding their willingness to cooperate. Additionally, there was no change in the People's position following the subsequent positive identification of the defendant by Ms. Toro-Abusalem<sup>1</sup>.

The People argue that while the 19- year delay is certainly protracted, that fact alone does not require dismissal. The court agrees. It is not only the period of the delay, it is also the fact that no reasonable justification for the delay has been shown. The People cite three cases in support of their argument that defendant's motion should be denied. First, they cite *People v Vernace* (274 AD 2d 595 [2d Dept 2000]). In *Vernace*, the Court found a 17- year delay was reasonable where the witnesses were initially fearful of coming forward and their fears alleviated over the passage of time. *Vernace* involved a 1981 vicious double murder in a Queens bar, for which no one was prosecuted. Three individuals linked to organized crime were thought to be suspects. While 20 to 25 people allegedly were in the bar at the time of the murders, virtually all of them denied seeing the crime. Shortly after the murders, the main witness either fled the jurisdiction or hid from the police, refusing to cooperate. Another witness recanted her identification of one of the defendants, resulting in dismissal of the indictment against him. Another defendant was never located. In finding the delay reasonable, the Court noted that the record supported the conclusion that at the time of the incident, the witnesses were in fear of reprisal. However, that fear dissipated over the

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<sup>1</sup>It should be noted that it does not appear that defendant's 2005 arrest was pre-authorized by the Bronx District Attorney's Office.



years. As stated above, the record does not substantiate any such fear on the part of the witnesses.

The People also cite *People v Telese* (1 Misc. 3d 490 [County Ct, Nassau County 2003]). *Telese* involved an 18- year delay. In *Telese*, after some 18 years, law enforcement was able to match two latent thumb prints recovered from a homicide crime scene. In finding the delay reasonable, the court noted that prior to the matching of the latent thumb prints to those of defendant, the People lacked proof to connect the defendant to the commission of the murders. According to the court, the ultimate matching of the prints resulted from the upgrading of the computerized search systems over the 18-year time period. Again, here, as stated above, the same evidence available in 1988 was available and ultimately relied upon in 2005 and 2007.

Finally, the People cite *People v Denis* (276 AD2d 237 [3<sup>rd</sup> Dept 2000]). In *Denis*, the Court held a six (6) year delay was not unreasonable where a newly elected district attorney reviewed evidence available six (6) years prior and decided it was sufficient to proceed. In upholding the conviction, the Appellate Division, Third Department, noted that the record on appeal fully supported the conclusion that the delay was justified. Here, the record fails to support such a finding.

### **The Nature of the Charge**

As stated above, the defendant is charged with Murder in the Second Degree (PL § 125.25 [1]), an extremely serious charge. The defendant is charged with acting with another in shooting two individuals, and killing one person. While, the Court is loathe to dismiss this charge, given the failure of the People to establish the reasonableness of the 19- year delay in this case, dismissal is warranted.

### **Pre-Trial Incarceration**

Defendant was incarcerated from the date of his arrest on June 5, 2007 until bail was set and he was released on that bail on June 22, 2008. While the People argue that this was not out of the norm for the pre-trial incarceration of defendants, they concede that it is a substantial period of time.

### **Impairment of Defense As a Result of the Delay**

Where there is a finding of undue delay, a finding of actual prejudice to the defense is not necessary (*People v Taranovich*, 37 NY2d at 447). Here, defendant does allege that given the delay, the memories as well as the availability of witnesses who may have assisted the defendant have been negatively affected.

The court, after having applied the *Taranovich* factors, finds that the delay has violated defendant's constitutional right to speedy trial.

### **CONCLUSION**

Defendant's motion to dismiss the indictment is granted.

The aforesaid constitutes the opinion, decision and order of the Court.

Dated: January 24, 2012  
Bronx, N.Y.



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**Troy K. Webber J.S.C.**